

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
At Charleston

Upon Original Jurisdiction

STATE OF WEST VIRGINIA
ex rel WEST VIRGINIA CITIZEN
ACTION GROUP,

Petitioner,

v.

No. 101494

EARL RAY TOMBLIN,
President of the West Virginia Senate,
RICHARD THOMPSON,
Speaker of the West Virginia House of Delegates, and
NATALIE E. TENNANT,
Secretary of State of West Virginia,

Respondents.

AND

STATE OF WEST VIRGINIA
Ex rel THORNTON COOPER,

Petitioner,

v.

No. 10-4004

EARL RAY TOMBLIN,
Acting Governor of the State of West Virginia,
and President of the West Virginia Senate,
RICHARD THOMPSON,
Speaker of the West Virginia House of Delegates, and
NATALIE E. TENNANT,
Secretary of State of West Virginia,


Respondents.

RESPONDENT RICHARD THOMPSON'S APPENDIX

Anthony J. Majestro (WVSB 5165)
POWELL & MAJESTRO, PLLC
405 Capitol Street, Suite P1200
Charleston, WV 25301
Phone: 304-346-2889
amajestro@powellmajestro.com
*Counsel for Respondent Richard Thompson,
Speaker of the West Virginia House of Delegates*

CERTIFICATE OF ACCURACY OF APPENDIX CONTENTS

I, Anthony J. Majestro, counsel for Respondent Richard Thompson, Speaker of the West Virginia House of Delegates, do, on this the 27th day of December, 2010, hereby certify, pursuant to the provisions of Rule 7(c)(2) and Rule 16(3) of the Revised Rules of Appellate Procedure, that the contents of this Appendix are, to the best of my knowledge and belief, accurate copies of the items that I have described in the **RESPONSE OF RICHARD THOMPSON, SPEAKER OF THE WEST VIRGINIA HOUSE OF DELEGATES, TO THE PETITIONS FOR WRIT OF MANDAMUS** to which this Appendix is appended and in the Table of Contents of this Appendix.



Anthony J. Majestro (WVSB 5165)

POWELL & MAJESTRO, PLLC

405 Capitol Street, Suite P1200

Charleston, WV 25301

Phone: 304-346-2889

Fax: 304-346-2895

*Counsel for Respondent Richard Thompson,
Speaker of the West Virginia House of
Delegates*

TABLE OF CONTENTS OF APPENDIX TO PETITION FOR WRIT OF MANDAMUS

	Page
RESPONDENT THOMPSON EXHIBIT NO. 1: “Tomblin, Kessler at Odds on Senate Leadership,” <u>Charleston Daily-Mail</u> , December 23, 2010.....	1-3
RESPONDENT THOMPSON EXHIBIT NO. 2: “The Situation in the State Senate,” MetroNews Talkline, December 22, 2010	4-5
RESPONDENT THOMPSON EXHIBIT NO. 3: “Counties Receive Reimbursement For Primary Election,” MetroNews Talkline, December 20, 2010	6
RESPONDENT THOMPSON EXHIBIT NO. 4: “Fiscal Note Summary,” http://www.legis.state.wv.us/Fiscalnotes	7
RESPONDENT THOMPSON EXHIBIT NO. 5: “Memorandum of Understanding Between Senate, House, Department of Military Affairs and Division of Protective Services”.....	8
RESPONDENT THOMPSON EXHIBIT NO. 6: Constitution of Virginia 1776 http://www.nhinet.org/ccs/docs/va-1776.htm	9-16
RESPONDENT THOMPSON EXHIBIT NO. 7: <u>Evolution of the Constitution of West Virginia (1909)</u> , Callahan, M.F., West Virginia University, Department of History And Political Science, Morgantown, West Virginia, 1909.....	17-26
RESPONDENT THOMPSON EXHIBIT NO. 8: “A State of Convenience – The Creation of West Virginia,” Chapter One, West Virginia Archives and History, http://www.wvculture.org/history/statehood/statehood01.html	27-29
RESPONDENT THOMPSON EXHIBIT NO. 9: “Proceedings and Debates of the Virginia Convention, 1829-30”	30-37
RESPONDENT THOMPSON EXHIBIT NO. 10: Virginia Constitution of 1851, http://vagovernmentmatters.org/archive/files/vaconstitution1851_ded45111de.pdf	38-61
RESPONDENT THOMPSON EXHIBIT NO. 11: West Virginia Constitution of 1863 http://www.wvculture.org/history/statehood/constitution.html	62-75
RESPONDENT THOMPSON EXHIBIT NO. 12: “Debates and Proceedings of the First Constitutional Convention of West Virginia,” December 5, 1861, reprinted at http://www.culture.org/history/statehood/cc120561.html	76-95
RESPONDENT THOMPSON EXHIBIT NO. 13: “Debates and Proceedings of the First Constitutional Convention of West Virginia,” December 13, 1861, reprinted at http://www.culture.org/history/statehood/cc121361.html	96-118

RESPONDENT THOMPSON EXHIBIT NO. 14: “Debates and Proceedings of the First Constitutional Convention of West Virginia,” February 4, 1862, reprinted at http://www.culture.org/history/statehood/cc020462.html	119-144
RESPONDENT THOMPSON EXHIBIT NO. 15: Biography of Daniel Duane Tompkins Farnsworth, http://www.wvculture.org/history/farnswor.html	145
RESPONDENT THOMPSON EXHIBIT NO. 16: Biography of William Erskine Stevenson, http://www.wvculture.org/history/stevens.html	146
RESPONDENT THOMPSON EXHIBIT NO. 17: “Journal of Constitutional Convention, Assembled at Charleston, West Virginia,” January 16, 1872, Henry S. Walker, Convention Printer, Charleston, West Virginia	147-166
RESPONDENT THOMPSON EXHIBIT NO. 18: “The Convention,” <u>Kanawha Daily</u> , February 28, 1872, p. 2.....	167
RESPONDENT THOMPSON EXHIBIT NO. 19: West Virginia Constitution of 1872 http://www.wvculture.org/history/government/1872constitution.html	168-190
RESPONDENT THOMPSON EXHIBIT NO. 20: “An End to the Senate Leadership Squabble?”, MetroNews, December 27, 2010	191

[Click now to learn about School Closings or Delays.](#)

NEWS

Thursday December 23, 2010

Tomblin, Kessler at odds on Senate leadershipby Jared Hunt
Daily Mail Capitol Reporter

0



1



0



1

CHARLESTON, W.Va. -- Acting Gov. Earl Ray Tomblin on Wednesday weighed in on the continuing struggle over who will control the state Senate when the legislative session convenes Jan. 12.

Over the past couple of weeks, Democratic senators have been divided into two camps over how the body should be governed in the absence of Tomblin, who is serving as acting governor by virtue of his status as Senate president.

Current Senate rules call for the body to be led by the Senate president pro tempore - typically a ceremonial position - in the absence of the president himself.

However, a faction in the majority party led by prospective gubernatorial candidate Jeff Kessler, D-Marshall, has proposed a change to Senate rules that would create an "acting president" elected by fellow senators. The Senate president pro tempore is appointed by the president.

Unlike the Senate president pro tem, that acting president would have the significant power of the Senate president to appoint committee chairmen and other leadership positions.

A group led by Senate Majority Leader Truman Chafin, D-Mingo; Pro Tem Joseph Minard, D-Harrison; and Finance Chair Walt Helmick, D-Pocahontas, led opposition to Kessler's proposal.

Kessler's argument has been that with Tomblin currently acting as the head of the executive branch, having his appointee lead the Senate could violate the separation-of-powers clause in the constitution.

He said the main issue for those on his side is the power of the Senate to select its leader independently of the executive branch.

"If two years ago when Gov. Manchin was sworn in, if he walked into the chamber and handed us our seating chart, we'd go crazy," Kessler said Wednesday. "And yet when it's done by the acting governor in his capacity as Senate president, we're expected to be fine with it."

Kessler has been saying publicly over the past few days that he could have the necessary votes needed to make the rule change.

Kessler also said he had met with Tomblin Dec. 16 and the acting governor pledged to honor the Democratic caucus' Dec. 13 decision in favor of the acting president position.

Kessler said Tomblin agreed to release a statement supporting the rule change - a move he said was important to break the stalemate. He said the Senate had become "paralyzed" by the debate.

Tomblin released a statement Wednesday at odds with Kessler's position.

"As you know, the Senate membership has been deeply divided regarding the changing of Senate Rules as it relates to the role of the Senate President while acting as Governor," Tomblin said in the statement. "This has resulted in an emotionally charged environment."

"During our caucus, I opposed the specific rule change that was proposed, which could be read to have prohibited my return to the Senate at all times and for any matters while I act as Governor. I did not believe that such a drastic rule change was necessary to preserve the appropriate separation of powers in our government."

While he does not support the rule change, Tomblin said he would abide by the wishes of the Democrats in nominating a Senate president pro tem.

"I have continually expressed to the members of the Democratic caucus that I would listen to their wishes in determining who would be Senate Pro Tempore, i.e., act as President in my absence," Tomblin said.

"Again, I have repeatedly indicated my willingness to abide by the wishes of the caucus in who presides over the Senate while I act as Governor."

Tomblin said he was committed to bringing both sides together to resolve the issue.

"My colleagues and I have been working feverishly to reach some conclusion where the Senate can come together without fractious differences that prevent the work of the State from being completed.

"The Senate is so terribly divided at this time that my main concern is getting all sides to begin the process of reconciliation in a manner that will permit the Senate to organize."

Kessler said later Wednesday that while he hadn't had time to digest Tomblin's statement, it appeared to be at odds with what the acting governor told him in private.

"That would not appear to be the understanding we had last Thursday," he said. "The understanding is that he would actually be honoring the caucus decision, not take a position contrary to the caucus decision."

Kessler said he would get with his supporters to see how Tomblin's statement would affect the situation.

One of those supporters, Sen. Erik Wells, D-Kanawha, wasn't pleased with Tomblin's statement.

"I'm disappointed in the actions of the acting governor, who has basically thumbed his nose at the majority of the Democrats who voted for a rule change," Wells said.

"And he is basically saying your vote doesn't matter and the majority rule doesn't need to be followed."

Wells said he's now considering casting a vote against Tomblin's presidency of the Senate when the session convenes in January.

"I am at a point where I would even question whether I would even vote for Earl Ray Tomblin for president - and if I have to be the lone vote against him, then I will because I am disappointed that he has created this division in the Senate because he is unwilling to let the Senate govern itself."

Wells said Tomblin was trying to govern both the executive and legislative branches and he finds that "totally unacceptable."

"If he cannot honor the majority Democratic Senate vote, he has not earned my vote for Senate president," he said. "I would encourage others to do what they feel is their conviction to do."

Kessler said Tomblin's statement did not answer a key question: Would the acting governor - who has pledged not to cast a vote while in the chief executive position - cast a vote on the Senate leadership issue?

By Kessler's count, should Tomblin abstain from voting, the rule change would pass by a 17-16 margin in the Senate; if he were to vote, the result would be a 17-17 tie.

Tomblin spokeswoman Jacqueline Proctor reiterated the acting governor's vow to abstain from voting when asked

Proctor said the governor's office felt confident the issues surrounding the leadership in the Senate would be resolved by the start of the legislative session.

Contact writer Jared Hunt at jared.h...@dailymail.com or 304-348-5148.

COMMENTS (0) ON "TOMBLIN, KESSLER AT ODDS ON SENATE LEADERSHIP"

NOTICE TO ALL USERS:

We value your comments, but we're changing the way we allow comments to be posted on our site. Rather than allowing comments to flow onto the site unfiltered, we are going to check the comments first for approval. So, readers who use the comments function may experience a lag before actually seeing the comment on our site. Personal attacks, remarks in poor taste or those overly critical will not be published. We believe the result will be a more thoughtful, civil website.

User Login



Happy Holidays
and \$59 lodge rates

Book Now



APPLY NOW

Respondent Thompson
Exhibit No. 2



The Voice of West Virginia

Facebook

Monday, December 27, 2010
Selling Gyroscopes & Drums

12/22/2010

The Situation In The State Senate

MetroNews Talkline
Charleston, Kanawha County

Print this story

Senator Jeff Kessler On Senate Struggle

Related Stories:
Acting Governor Says The Senate Needs To Come Together

LISTEN NOW! Senate President Pro Tempore Joe Minard

How Much Power?

'We Have Too Much Work To Do'

The state Senate's Judiciary Committee Chair says he is *not* "horse trading" to secure the position of Acting Senate President in the New Year.

Senator Jeff Kessler, though, claims others are making such deals.

"We're prepared to move forward, but we are at a paralysis level in the Senate at this point on organization until we decide," Senator Kessler said on Wednesday's MetroNews Talkline of the leadership issues still

swirling in the Senate.

He says he clearly won the support of most of the Democrat Senators during a caucus earlier this month. The vote was 16 to 12 for a rule change that would position Senator Kessler to take over as Acting President when the regular legislative session begins on January 12th.

Some say such a change is necessary because of concerns about potential conflicts and issues about the separation of powers since Senate President Earl Ray Tomblin is also now serving as Acting Governor.

Kessler claims the Acting Governor agreed to publicly support the rule change, but that has not yet happened. And, Kessler says, he's continually running into opposition from others in his own Democrat Party, including Senate Majority Leader Truman Chafin.

"The Majority Leader of the Democrat Party is actively working to overturn the clear and distinct will of the Democrat majority in the Senate," Kessler said.

Current Senate President Pro Tempore Joe Minard from Harrison County says Acting Governor Tomblin did *not* agree to a rule change.

"The Governor said that he would follow the caucus on an election of a (Senate President) Pro Temp so that the body can then vote on who they want as a Pro Temp," Senator Minard said.

He is the current Senate President Pro Tempore.

"This is an issue of rules, rules that have been in place for well over 70 years and now they're trying to make an exception to that rule," Senator Minard said. "If you elect an Acting President, you could be setting up an adversarial position to the Governor which is not good."

Critics say the whole debate is about power.

Senator Kessler, if selected to be Acting Senate President, would make changes to those in leadership positions in the state Senate. Senator Minard says he would make no such changes because they are not needed.

Any rule changes would have to be approved when the 2011 Legislative Session begins at the State Capitol on Wednesday, January 12th. Acting Governor Earl Ray Tomblin will deliver his State of the State Address that night.

Land of Adventure



Visitor Guide

W.V.A. INSURANCE COMPANY

Member of the F&W Group

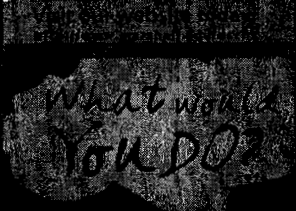
- Farm
- Homeowners
- Commercial Fire

Specialty policies available
Contact your agent today

800-252-4485 304-643-2772
wvainurance.com



Earn
College
Credit
Online



CLICK HERE!



Register with WVMetroNews.com!

Already a member? [Click here](#) to login!

Registering for WVMetroNews.com is free and easy!

- Breaking News Alerts
- Take part in online discussions
- Get the headlines you want delivered right to your e-mail inbox, as soon as it's posted.

[Register Now!](#)



DRUNK DRIVING
OVER THE LIMIT. UNDER ARREST.

GHSP

GRAND HOSPITAL SYSTEM
304-926-2509 | www.dmv.wv.gov

Respondent Thompson
Exhibit No. 3

User Login



Happy Holidays
and \$59 lodge rates

Book Now



Follow Us: f s

MetroNews
The Voice of West Virginia

Monday, December 27, 2010
S. I. for Changes & Delays

12/20/2010

Counties Receive Reimbursement for Primary Election

Staff
Charleston

Print this story

West Virginia's Secretary of State says her office cut costs of August's special primary election for U.S. Senate, saving taxpayers about \$36,000.

In July, the state legislature passed a law that had counties pay for the primary, report expenses to the state, then receive reimbursement from the secretary of state.

Counties submitted reimbursement requests totaling \$3,117,436.

Tennant says after trimming mileage reimbursement and repairs of elections equipment that would have needed work anyway, the state will have to pay \$3,081,401, a savings of \$36,035.

More than half of the state's counties have received reimbursement.

The state legislature allocated \$3 million for the primary. Tennant says even though the cost exceeded that amount, she's pleased with her office's work.

"I wanted to keep it as close to \$3 million as possible. And we ended up just going a little bit over. But considering people were saying the special election was going to be twice this expensive, I'm happy that we kept the cost under control," Tennant said.

Kanawha County received the largest reimbursement at \$341,628.60. Wirt County was given the smallest amount at \$13,221.30.

About half the cost of the primary went toward paying poll workers.



1 replies

Register with WVMetroNews.com!

Already a member? [Click here](#) to login!

Registering for WVMetroNews.com is free and easy!

- Breaking News Alerts
- Take part in online discussions
- Get the headlines you want delivered right to your e-mail inbox, as soon as it's posted.

[Register Now!](#)

W.VA. INSURANCE COMPANY

Insurance & More

Offering:

- Fire
- Life
- Health
- Commercial Fire

See your agent for more information
or contact us online at
[www.wvainsurance.com](#)

800-252-4485 304-643-2772
[wvainsurance.com](#)

2010 Online Holiday Guide



CLICK HERE!

Respondent Thompson
Exhibit No. 4

Secretary of State

2010X5011 Introduced HB201

US SENATE VACANCY

FUND(S)

0155-General Revenue from State General Rev Surplus

Sources of Revenue

General Fund

Legislation creates:

A New Program

Fiscal Note Summary

Effect this measure will have on costs and revenues of state government.

The State will incur costs associated with a special primary election to fill the vacant US Senate seat through direct expenditures and reimbursement of expenditures incurred by counties.

Fiscal Note Detail

Over-all effect

Effect of Proposal	Fiscal Year		
	2010 Increase/Decrease (use "-")	2011 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	5,900,000	0	0
Personal Services	0	0	0
Current Expenses	5,900,000	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

3. Explanation of above estimates (including long-range effect):

The above estimated are based on date supplied by county clerks, the WV Association of Counties, and data compiled by the Secretary of State's Office. Expenditures will include reimbursements for pollworkers, programming, ballot printing and publication, facilities and equipment rentals, and overhead and administrative costs incurred by the counties and state. No fiscal impact due to this event expected beyond this event.

Memorandum

Person submitting Fiscal Note:
Brian A. Messer, CPA Chief Financial Officer
Email Address:
bmesser@wvsos.com

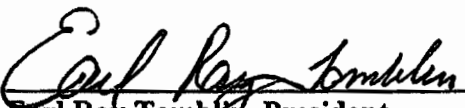
Appropriation from state general revenue surplus to Secretary of State general revenue for costs associated with special election

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
DIVISION OF PROTECTIVE SERVICES
CAPITOL POLICE

MEMORANDUM OF UNDERSTANDING

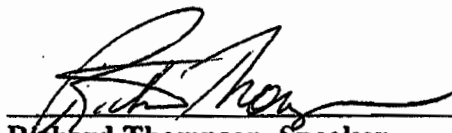
This Memorandum of Understanding constitutes an agreement between the West Virginia Senate, West Virginia House of Delegates, and the Department of Military Affairs and Public Safety regarding the "Doc for a Day" Program. The increased activity and population during the session necessitates the "Doc for a Day" program be in operation and a registered nurse be on site in a full-time capacity. The program will be in effect during the entirety of the 2011 80th Regular Legislative Session.

The Senate and the House of Delegates mutually agree to provide funding, equally divided between them, for this additional service.



Earl Ray Tomblin, President
West Virginia Senate

Date: 12/6/2010



Richard Thompson, Speaker
West Virginia House of Delegates

Date: 12/8/2010

Joseph Thornton, Cabinet Secretary
Department of Military Affairs and Public Safety

Date: _____

C. R. "Jay" Smithers, Director
Division of Protective Services

Date: _____

DOCUMENT

Who We Are*The Story of
America's Constitution*

The Constitution of Virginia

June 29, 1776 1(1)**Bill of Rights; June 12, 1776**

A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity, as the basis and foundation of government.

SECTION 1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

SEC. 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

SEC. 3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

SEC. 4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary

SEC. 3. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

SEC. 6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assembled, for the public good.

SEC. 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

SEC. 8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

SEC. 9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

SEC. 10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

SEC. 11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

SEC. 12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

SEC. 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

SEC. 14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of the government of Virginia, ought to be erected or established within the limits thereof.

SEC. 15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

SEC. 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

THE CONSTITUTION OR FORM OF GOVERNMENT, AGREED TO AND RESOLVED UPON BY THE DELEGATES AND REPRESENTATIVES OF THE SEVERAL COUNTIES AND CORPORATIONS OF VIRGINIA

Whereas George the third, King of Great Britain and Ireland, and elector of Hanover, heretofore intrusted with the exercise of the kingly office in this government, hath endeavoured to prevent, the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good:

By denying his Governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and, when so suspended neglecting to attend to them for many years:

By refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the legislature:

By dissolving legislative Assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people:

When dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head:

By endeavouring to prevent the population of our country, and, for that purpose, obstructing, the laws for the naturalization of foreigners:

By keeping among us, in times of peace, standing armies and ships of war:

By effecting to render the military independent of, and superior to, the civil power:

By combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation:

For quartering large bodies of armed troops among us:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offences:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever:

By plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people:

By inciting insurrections of our fellow subjects, with the allurements of forfeiture and confiscation:

By prompting our negroes to rise in arms against us, those very negroes whom, by an inhuman use of his negative, he hath refused us permission to exclude by law:

By endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions of existence:

By transporting, at this time, a large army of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation:

By answering our repeated petitions for redress with a repetition of injuries: And finally, by abandoning the helm of government and declaring us out of his allegiance and protection.

By which several acts of misrule, the government of this country, as formerly exercised under the crown of Great Britain, is **TOTALLY DISSOLVED**.

We therefore, the delegates and representatives of the good people of Virginia, having maturely considered the premises, and viewing with great concern the deplorable conditions to which this once happy country must be reduced, unless some regular, adequate mode of civil polity is speedily adopted, and in compliance with a recommendation of the (general Congress, do ordain and declare the future form of government of Virginia to be as followeth:

The legislative, executive, and judiciary department, shall be separate and distinct, so that neither exercise the powers properly belonging to the other: nor shall any person exercise the powers of more than one of them, at the same time; except that the Justices of the County (courts shall be eligible to either House of Assembly

The legislative shall be formed of two distinct branches, who, together, shall be a complete Legislature. They shall meet once, or oftener, every year, and shall be called, The General Assembly of Virginia. One of these shall be called, The House of Delegates, and consist of two Representatives, to be chosen for each county, and for the district of West-Augusta, annually, of such men as actually reside in, and are freeholders of the same, or duly qualified according to law, and also of one Delegate or Representative, to be chosen annually for the city of Williamsburgh, and one for the borough of Norfolk, and a Representative for each of such other cities and boroughs, as may hereafter be allowed particular representation by the legislature; but when any city or borough shall so decrease, as that the number of persons, having right of suffrage therein, shall have been, for the space of seven Years successively, less than half the number of voters in some one county in Virginia, such city or borough thenceforward shall cease to send a Delegate or Representative to the Assembly.

The other shall be called The Senate, and consist of twenty-four members, of whom thirteen shall constitute a House to proceed on business; for whose election, the different counties shall be divided into twenty-four districts; and each county of the respective district, at the time of the election of its Delegates, shall vote for one Senator, who is actually a resident and freeholder within the district, or duly qualified according to law, and is upwards of twenty-five years of age; and the Sheriffs of each county, within five days at farthest, after the last county election in the district, shall meet at some convenient place, and from the poll, so taken in their respective counties, return, as a Senator, the man who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be equally

divided into four classes and numbered by lot. At the end of one year after the general election, the six members, elected by the first division, shall be displaced, and the vacancies thereby occasioned supplied from such class or division, by new election, in the manner aforesaid. This rotation shall be applied to each division, according to its number, and continued in due order annually.

The right of suffrage in the election of members for both Houses shall remain as exercised at present; and each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election, for the supplying intermediate vacancies.

All laws shall originate in the House of Delegates, to be approved of or rejected by the Senate, or to be amended, with consent of the House of Delegates; except money-bills, which in no instance shall be altered by the Senate, but wholly approved or rejected

A Governor, or chief magistrate, shall be chosen annually by joint ballot of both Houses (to be taken in each House respectively) deposited in the conference room; the boxes examined jointly by a committee of each House, and the numbers severally reported to them, that the appointments may be entered (which shall be the mode of taking the joint ballot of both Houses, in all cases) who shall not continue in that office longer than three years successively, nor be eligible, until the expiration of four years after he shall have been out of that office. An adequate, but moderate salary shall be settled on him, during his continuance in office; and he shall, with the advice of a Council of State, exercise the executive powers of government, according to the laws of this Commonwealth; and shall not, under any pretence, exercise any power or prerogative, by virtue of any law, statute or custom of England. But he shall, with the advice of the Council of State, have the power of granting reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct: in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates.

Either House of the General Assembly may adjourn themselves respectively. The Governor shall not prorogue or adjourn the Assembly, during their sitting, nor dissolve them at any time; but he shall, if necessary, either by advice of the Council of State, or on application of a majority of the House of Delegates, call them before the time to which they shall stand prorogued or adjourned.

A Privy Council, or Council of State, consisting of eight members, shall be chosen, by joint ballot of both Houses of Assembly, either from their own members or the people at large, to assist in the administration of government. They shall annually choose, out of their own members, a President, who, in case of death, inability, or absence of the Governor from the government, shall act as Lieutenant-Governor. Four members shall be sufficient to act, and their advice and proceedings shall be entered on record, and signed by the members present, (to any part whereof, any member may enter his dissent) to be laid before the General Assembly, when called for by them. This Council may appoint their own Clerk, who shall have a salary settled by law, and take an oath of secrecy, in such matters as he shall be directed by the board to conceal. A sum of money, appropriated to that purpose, shall be divided annually among the members' in proportion to their attendance; and they shall be incapable, during their continuance in office, of sitting in either House of Assembly. Two members shall be removed, by Joint ballot of both Houses of Assembly, at the end of every three years, and be ineligible for the three next years. These vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections, in the same manner.

The Delegates for Virginia to the Continental Congress shall be chosen annually, or superseded in the mean time, by joint ballot of both Houses of Assembly.

The present militia officers shall be continued, and vacancies supplied by appointment of the Governor, with the advice of the Privy Council, on recommendations from the respective County Courts; but the Governor and Council shall have a power of suspending any officer, and ordering a Court Martial, on complaint of misbehaviour or inability, or to supply vacancies of officers, happening when in actual service.

The Governor may embody the militia, with the advice of the Privy Council; and when embodied, shall alone have the direction of the militia, under the laws of the country.

The two Houses of Assembly shall, by joint ballot, appoint Judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney-General, to be commissioned by the Governor, and continue in office during good behaviour. In case of death, incapacity, or resignation, the Governor, with the advice of the Privy Council, shall appoint persons to succeed in office, to be approved or displaced by both Houses. These officers shall have fixed and adequate salaries, and, together with all others, holding lucrative offices, and all ministers of the gospel, of every denomination, be incapable of being elected members of either House of Assembly or the Privy Council.

The Governor, with the advice of the Privy Council, shall appoint Justices of the Peace for the counties; and in case of vacancies, or a necessity of increasing the number hereafter, such appointments to be made upon the recommendation of the respective County Courts. The present acting Secretary in Virginia, and Clerks of all the County Courts, shall continue in office. In case of vacancies, either by death, incapacity, or resignation, a Secretary shall be appointed, as before directed; and the Clerks, by the respective Courts. The present and future Clerks shall hold their offices during good behaviour, to be judged of, and determined in the General Court. The Sheriffs and Coroners shall be nominated by the respective Courts, approved by the Governor, with the advice of the Privy Council, and commissioned by the Governor. The Justices shall appoint Constables; and all fees of the aforesaid officers be regulated by law.

The Governor, when he is out of office, and others, offending against the State, either by misadministration, corruption, or other means, by which the safety of the State may be endangered, shall be impeachable by the House of Delegates. Such impeachment to be prosecuted by the Attorney-General, or such other person or persons, as the House may appoint in the General Court, according to the laws of the land. If found guilty, he or they shall be either forever disabled to hold any office under government, or be removed from such office pro tempore, or subjected to such pains or penalties as the laws shall direct.

If all or any of the Judges of the General Court should on good grounds (to be judged of by the House of Delegates) be accused of any of the crimes or offences above mentioned, such House of Delegates may, in like manner, impeach the Judge or Judges so accused, to be prosecuted in the Court of Appeals; and he or they, if found guilty, shall be punished in the same manner as is prescribed in the preceding clause.

Commissions and grants shall run, "In the name of the Commonwealth of Virginia," and bear test by the Governor, with the seal of the Commonwealth annexed. Writs shall run in the same manner, and bear test by the Clerks of the several Courts. Indictments shall conclude, "Against

the peace and dignity of the Commonwealth."

A Treasurer shall be appointed annually, by joint ballot of both Houses.

All escheats, penalties, and forfeitures, heretofore going to the King, shall go to the Commonwealth, save only such as the Legislature may abolish, or otherwise provide for.

The territories, contained within the Charters, erecting the Colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed, to the people of these Colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Patomaque and Pokomoke, with the property of the Virginia shores and strands, bordering on either of the said rivers, and all improvements, which have been, or shall be made thereon. The western and northern extent of Virginia shall, in all other respects, stand as fixed by the Charter of King James I. in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Britain and France, in the Year one thousand seven hundred and sixty-three; unless by act of this Legislature, one or more governments be established westward of the Alleghany mountains. And no purchases of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.

In order to introduce this government, the Representatives of the people met in the convention shall choose a Governor and Privy Council, also such other officers directed to be chosen by both Houses as may be judged necessary to be immediately appointed. The Senate to be first chosen by the people to continue until the last day of March next, and the other officers until the end of the succeeding session of Assembly. In case of vacancies, the Speaker of either House shall issue writs for new elections.

(1) Verified from "Ordinances passed at a General Convention of Delegates and Representatives from the Several Counties and Corporations of Virginia, Held at the Capitol in the City of Williamsburg, on Monday, the 6th of May, A. D. 1776. Reprinted by a Resolution of the House of Delegates of the 24th February, 1816. Richmond: Ritchie, Trueheart & Duval, Printers. 1816." pp. 3-6.

"The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia, held at Richmond Town, in the County of Henrico, on the 20th of March, 1775. . Re-printed by a Resolution of the House of Delegates, of the 24th February, 1810. Richmond: Ritchie, Trueheart & Duval, Printers. 1816." 8 pp.

"The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia held at Richmond Town, in the County of Henrico, on Monday the 17th of July 1775. Reprinted by a Resolution of the House of Delegates, of the 24th February, 1816. Richmond: Ritchie, Trueheart & Du-Val, Printers. 1816." 116 pp.

"The Proceedings of the Convention of Delegates held at the Capitol, in the city of Williamsburg, in the Colony of Virginia, On Monday, the 6th of May, 1776. Reprinted by a

Resolution of the House of Delegates, of the 24th February, 1816. Richmond: Ritchie, Trueheart & Duval, Printers. 1816." 86 pp.

"Ordinances passed at a General Convention of Delegates and Representatives, from the several Counties and Corporations of Virginia, held at the Capitol in the City of Williamsburg, On Monday, the 6th of May, Anno-Dom. 1776. Reprinted by a Resolution of the House of Delegates, of the 24th February, 1816. Richmond: Ritchie, Trueheart & Du-Val, Printers. 1816." 19 pp.

This Declaration of Rights was framed by a Convention, composed of forty-five members of the colonial house of burgesses, which met at Williamsburgh May 6, 1776, and adopted this Declaration June 12, 1776.

This constitution was framed by the convention which issued the preceding Declaration of Rights, and was adopted June 29, 1776. It was not submitted to the people for ratification.

[Back]

Source: *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America* Compiled and Edited Under the Act of Congress of June 30, 1906 by Francis Newton Thorpe Washington, DC : Government Printing Office, 1909.

©1999 NATIONAL HUMANITIES INSTITUTE

Evolution Of The Constitution Of West Virginia (1909)



Maud Fulcher Callahan

Evolution of the Constitution of West Virginia

I. Introduction.

West Virginia, the only distinctively mountainous state of the Appalachian region, and the only state whose formation represents a logical conclusion of the sectionalism which existed before the civil war in all the southern states from Pennsylvania southward to Florida, has a constitutional history somewhat unique. Its destiny to form a separate state was largely determined by the flow of its rivers in an opposite direction to the flow of the tide water rivers, and was foreshadowed in the different political ideas of the West—causing it to give a proportionately larger vote than the East for the ratification of the national constitution in 1788, to oppose the Virginia resolutions of 1798, to antagonize the election of Jefferson in 1801, to favor the American system as a national policy and to advocate the establishment of free schools and the further democratization of social and political institutions. Showing a growing influence in determining the constitutional development of the mother state before the war and its determination to fight the mother state in order to preserve the Union, the New Dominion still retains in its constitution many evidences of a surviving sentiment in favor of the institutions of the Old Dominion.

II. A Half Century Under the Constitution of the Revolution.

The first constitution of Virginia was adopted on June 29, 1776 when there were within the limits of the present state of West Virginia only Hampshire and Berkeley counties and the district of West Augusta. This constitution¹ established an annual general assembly of two houses the members of which were elected by the limited number of people who had the right of suffrage. The house of delegates, the members of which were elected each

1. Poore, Charters and Constitutions of the United States, vol. 2, pp. 1910-12.

year, replaced the old house of burgesses and with slight exception retained the old system of representation: two representatives from each county, and two from the district of West Augusta, (and one from both Williamsburg and Norfolk). The general assembly was authorized to grant to each new county which it might create two delegates, and to use its discretion in allowing representation to new towns; but there was a provision for dropping the representation of any town whose population decreased until for seven consecutive years its voting population was less than one-half that of a county.

The senate was composed of twenty-four members chosen for a term of four years from twenty-four districts, and was made a rotating body by a provision for the election of six members each year. The apportionment was purely arbitrary and without provision for future reform.

The elective franchise remained as exercised since the law of 1736³ and was confined to freeholders who had been in possession of their freehold at least one whole year before the issue of the writ for the election at which they wished to vote.

With the election of the members of the general assembly the voice of the voting population ceased. The governor, treasurer, the eight privy councillors, the secretary, the attorney-general, and the judges of all the superior courts were chosen by joint ballot of the two houses of the general assembly; the governor and treasurer were chosen annually; the privy council was subject to the removal of two of their number every three years by the "scratch" of the assembly; the secretary, the attorney-general and the judges served during good behavior.

The people had little share in local government. The self-perpetuating county courts⁴ had general management of all local affairs. These courts constitutionally appointed the sheriff, the coroner and the clerk of the county; they had the statutory privilege of appointing all other civil officers of the county and all military officers under the grade of brigadier-general, and of laying all taxes for county purposes and of expending them as they saw fit; and, with all these powers, they were responsible to no one for their actions.

2. Jamestown and the college of William and Mary were no longer granted representation.

3. Hening vol. 4, pp. 470, 476. A freehold was one hundred acres of uncultivated land without a house, twenty-five acres of improved land with a house, or a house and lot in town.

4. Jefferson's Works, vol. 7, p. 10.

The development of West Virginia for the half century after the revolution produced new problems for the Old Dominion. Before the close of the eighteenth century the population in the region now known as West Virginia had begun to grow rapidly. In the Virginia convention of June 2, 1788, which was called to ratify or reject the federal constitution, it was represented by six new counties which had been formed from the district of West Augusta: Monongalia and Ohio, in 1776, Greenbrier in 1777, and Harrison, Hardy and Randolph in 1784, 1785 and 1786 respectively. This number of counties had increased to thirteen in 1800 by the formation of Pendleton in 1787, Kanawha in 1789, Brooke in 1796, Wood in 1798 and Monroe in 1799. These thirteen became sixteen in 1810 by the addition of Jefferson in 1801, Mason in 1804 and Cabell in 1809. To these counties four new ones were added before 1820: Tyler in 1814, Lewis in 1816, Nicholas in 1818 and Preston in 1818. By the end of the next decade a total of twenty-three counties was completed by the formation of Morgan in 1820, Pocahontas in 1821 and Logan in 1824. The white population had increased from 50,593 in 1790 to 70,894 in 1800, to 93,355 in 1810, to 120,236 in 1820, and to 157,084 in 1830.⁵

During these years, and partly as a result of changing conditions, the defects in the constitution became very marked. These defects were early noticed by Jefferson who desired a state constitutional convention to remedy them. Commenting on the constitution, in 1782 he wrote: "The majority of the men in the state who pay and fight for its support are unrepresented in the legislature—the roll of freeholders entitled to vote not including generally the half of those on the roll of the militia or of the tax gatherers. Among those who share the representation the shares are unequal." To show some of the inequalities which existed even at that early date between the four sections of the state from the coast to the Ohio he prepared the following table:⁶

	Fighting men	Delegates	Senators
East of river falls.....	19,012	71	12
Falls to Blue Ridge.....	18,828	46	3
Blue Ridge to Alleghenies..	7,673	16	2
Trans-Allegheny	4,458	16	2

The inequality of the county system of representation is well shown by a comparison of the counties. In 1800 Warwick with a

5. Census reports for 1790, 1800, 1810, 1820 and 1830.

6. Jefferson's Works, vol. 3, p. 360.

white population of 614 and had two members in the house of delegates while at the same time Berkeley with a white population of 17,832 had but two members in the lower house. The inequality was equally noticeable in the senate. In 1815 the entire West with a free white population of about 233,469,⁷ two-fifths that of the state, was represented by four senators; and at the same time the East containing the other three-fifths of the white population, 342,781, was represented by twenty senators.

Several attempts to secure adjustment were unsuccessful. In the house of delegates, in the May session of the assembly of 1784, a petition from Augusta county asking for a constitutional convention was the subject of a two days debate; and although Madison strongly advocated it, a bill for a convention failed—largely through the violent opposition of Patrick Henry.⁸

After 1790 petitions praying for a reform in representation and suffrage were presented at almost every session of the assembly. From the counties of Patrick and Henry these petitions were expected regularly at the commencement of each session. In the session of 1806 a bill for submitting to the people the proposition to call a constitutional convention passed the house but was indefinitely postponed in the senate through the influence of prudent men who feared the political bitterness of the times.⁹

In 1814, a constitutional reform bill which provided for extension of suffrage, reapportionment of representation, and the reduction of the total number composing the house of delegates, was rejected in the house by a slight majority. The next year, a bill was introduced into the house providing for a rearrangement of the senatorial districts on a white basis. The fight was largely sectional. The western members unsuccessfully urged the passage of the bill. Eastern constitutional lawyers in the house held that the districts, created by the same power that made the constitution, could be altered only by a constitutional convention. This doctrine the westerners then determined to put into practice. On August 19, 1816, a convention composed of representatives from thirty-six counties (twenty-four of which were from the region west of the Blue Ridge) met at Staunton and sent a memorial to the general assembly requesting the passage of a bill for submitting to the people the question of calling a constitutional convention. Though the house was successful in securing the passage of a bill

7. Madison's Writings, vol. 1, p. 87.

8. Debates Virginia Constitutional Convention, 1829-30, pp. 81, and 421.

calling a convention to change the constitution by amendments which would extend the right of suffrage, equalize the land tax, and equalize representation on the basis of the white population, its program for securing a convention and larger western representation was frustrated in the senate. Then the legislature, reversing the doctrine held by the constitutional lawyers in 1815 passed a bill equalizing the senatorial districts according to the white population of the old census of 1810 which no longer represented the true population of the West.⁹ By this reapportionment, the West got nine instead of four senators, while the number from the East was reduced from twenty to fifteen.

Though for a time public agitation ceased, by 1824 the equalization of representatives in the house of delegates on the white basis became the subject of newspaper controversy and general discussion which resulted in a second meeting at Staunton, on July 25, 1825, attended by upwards of one hundred friends of reform. This convention passed resolutions in favor of several reforms: representation in the house according to white population; the reduction of the total number of delegates in the house; the extension of the right of suffrage; the abolition of the executive council, and a more responsible executive. These resolutions, forwarded to the general assembly, in the three following sessions were the subject of discussions which finally (in January 1828) resulted in the passage of a bill for submitting the question of a constitutional convention to a vote of the freeholders. The election returns showed that the convention was favored by the almost unanimous vote of the West and opposed by over one-half the vote of the East.

III. The Constitutional Convention of 1829-30.

The convention which met at Richmond on October 5, 1829, was an august assemblage composed of ninety-six of the most prominent men of the state (four members from each senatorial district)—eighteen of whom were from counties within the present limits of West Virginia. Its dominating spirit of sectionalism was largely due to the geographic and economic conditions which for years the defects of the old constitution had aggravated. The two sections agreed on the acceptance of the bill of rights; but, with their radically divergent ideas, they clashed on the practical application of the principles of government.

9. Ibid pp. 82 and 83.

western people who quoted Jefferson in favor of free manhood suffrage, but who were promptly notified by Randolph that the East was "not to be struck down with the authority of Mr. Jefferson." At this time, in Virginia (the only state of the twenty-four in the Union which still adhered strictly to freehold suffrage), in a total of 143,000 free white males there were 100,000 free white citizens paying taxes to the state—of which about 40,000 were freeholders and 60,000 were men who owned personal property.¹²

Having failed in the effort for manhood suffrage, the West fought vigorously, but unsuccessfully, to extend the suffrage at least to taxpayers. Several easterners, arguing that much of the land in the West, fit only for a lair of wild beasts, was not worth a mill per acre and would never be of any value, were determined to draw the line of suffrage restriction even closer by fixing a minimum value for a freehold. Throughout the East the feeling was pretty general that there should be some local attachment. Monroe said that the elective franchise should be confined to an interest in the land, and Randolph approvingly agreed that "terra firma" was the only safe ground in the commonwealth on which the right of suffrage could stand. "The moment you quit the land," said he, "you find yourself at sea without compass, without landmarks, or polar star."¹³

The convention finally agreed to lessen the requirements of a freehold, and to extend the suffrage to leaseholders and housekeepers who paid taxes.

Philip Doddridge, typifying the western democratic sentiment moved that the executive, unhampered by a council, should be elected by the people and responsible to them.¹⁴ Although at that time eighteen states elected their governors by popular vote, his motion was lost. Mr. Naylor of Hampshire proposed that the office of sheriff should be filled by the people instead of by the county court whose members were accustomed to give this office to themselves in rotation, the one receiving it selling it at public auction to the highest bidder; but this recommendation met the formidable and successful opposition of men as influential as Giles and Leigh who thought such an innovation would disturb the county court system which to them was "the most valuable part of the constitution." In the convention there seemed to be an abhorrence of

12. Ibid, pp. 355, and 356.

13. Ibid, pp. 347, 428-43.

14. Ibid, p. 464. W. T. Willey: *Life of Philip Doddridge*, pp. 55-57.

population according to the census of 1850 (giving to the West eighty-three delegates and to the East sixty-nine). The apportionment in the senate was arbitrarily fixed giving thirty to the East and twenty to the West, but in the plan there was a provision that either the legislature should make a reapportionment on the white basis in 1865 or the governor should submit the basis question to the people. Any qualified voter of twenty-five years of age, except a minister of the gospel, or an officer of a banking corporation, or an attorney for the commonwealth, was eligible for election to the general assembly. The delegates were elected biennially; half of the senators were elected every two years and served four years.²⁶

With the amicable settlement of the question which for so many years had been the great disturbing element, the convention was free to express that democratic spirit of the times which had been gradually breaking down old barriers, and which Virginia had not been able to resist as is shown by the work of the legislature of 1849 which abolished imprisonment for debt, and granted to women the right to make a will.

The provision extending suffrage to every white male over twenty-one, two years resident in the state and twelve months in the district where he votes, not only greatly enlarged the number enjoying the elective franchise but abolished the crying abuse of double and treble voting. A man, who before could vote in every district in which he held real or pretended property which he could reach by fast driving or riding on election day, could now vote only in the district in which he resided.²⁷ Although the method of voting was still viva voce, dumb persons were permitted the use of the ballot—a provision which was evidently suggested by the precedent in the Kentucky constitution of 1850.

The executive council was abolished, the judicial system reformed, and the county court reorganized. The governor, lieutenant governor (for a term of four years), the twenty-one circuit judges (for a term of eight years), the five judges of the court of appeals (for a term of twelve years) and all local officers—the justices of the peace and attorney for the commonwealth (for a term of four years), the clerk of the court and the surveyor (for a term of six years) and the sheriff and commissioners (for a term of two years)—were elected by the people. Provision was made for the payment of jurors who previously had been chosen from the

26. Poore, vol. 2, pp. 1919-1937.

27. Governor's message to the general assembly, December, 1849. J. A. C. Chandler: *History of Suffrage in Virginia*, pp. 41-45.

United States senate made vacant by the resignation of Hunter and Mason.

The convention reassembled on August 6; and, after much discussion concerning the legality of such an act, on August 20, it passed an ordinance providing for the formation of a new state; and adjourned on August 21. On October 24, the people living within the boundaries of the proposed state ratified the ordinance by a vote of 18,408 to 781 and at the same time elected delegates to a constitutional convention which met at Wheeling on November 26, 1861.³⁶

The constitution framed by the Wheeling convention was far better than the prejudices of many of the members, as reflected in the debates, might have indicated.³⁷ Unfortunately, there was no official provision for the publication of the debates. Perhaps the reasons for this neglect are reflected in the remarks of three members. Chapman J. Stuart, representing Doddridge county, speaking without historical foresight said in the convention, that to publish the debates which no one would ever read would be an unnecessary expense. James H. Brown of Kanawha, untrained in historical perspective, said that after the vital point—the success and excellence of the constitution—had been attained, the debates by which it had been attained were “immaterial and unimportant.” Hall, a stickler for impromptu and informal discussion, opposed publication because he feared it would lead to “set speeches.”³⁸

The name selected for the new state was not the only one proposed. The name Kanawha which had been used in the ordinance for the formation of the state was rejected—probably because there was already in the state a county and a river by that name. Mr. Willey said that some of his constituents along the Monongahela thought that Kanawha was too hard to spell. There was objection also to the name of West Virginia. Many felt that, as immigrants held the name Virginia in disrepute, thousands believing that Virginia policy still prevailed would be kept away if that name were retained. Others feared that the soubriquet “West” would disgrace the new state in comparison with Virginia. The question was finally settled by the sentiment of those who had long

36. Journal of the Constitutional Convention of West Virginia, 1861-2: Appendix (No. 53).

37. The stenographic notes of the debates, made by an assistant clerk of the convention, Granville D. Hall, are in manuscript in the department of Archives and History of West Virginia. These have been read by the writer and frequent reference will be made to them under the title “Hall MS.”

38. Journal p. 45; and Hall MS., Dec. 16, 1861 and Feb. 13, 1862.

After the early sessions of the convention, the efforts of the more radical reactionaries were somewhat neutralized by the more liberal and modern Democrats who feared that the ex-Confederate element of the party would force into the constitution provisions which might defeat it before the people. Some, observing how vigorously many members rode the hobby of economy, feared they would adopt a constitution intended not so much to benefit the people as to save money. The radical as well as the economic spirit of the members was shown in the great squabble which arose on January 22, after Mr. Farnsworth of Upshur made a customary and appropriate motion that the United States flag should be placed over the convention hall while the convention was in session.⁶⁶

The new constitution exhibited the marks of the period of partisanship which preceded it. Due to this feeling was the insertion of provisions which made martial law unconstitutional, prohibited the denial of the right to vote to any citizen on the ground that his name had not been registered, and forbade the legislature to establish or authorize a board or court of registration. The same feeling was reflected in the declaration, found in no other state constitution, that political tests which require persons, as a prerequisite to the enjoyment of their civil and political rights, to purge themselves by their own oaths of all past offences, are repugnant to the principles of a free government. Several new sections quoted from the Virginia constitution of 1851 and consisting of glittering generalities on the equality of man, the sovereignty of the people and the inalienable right of the majority, were also

66. After Farnsworth's motion, Ward, who it was jocularly said was perhaps best known for his magic ointment and scalp wash, moved to strike out "United States flag" and insert the "flag of West Virginia," arguing that his first allegiance was to his state. After a futile attempt to lay on the table, Farnsworth's motion was adopted, but the weighty question was reconsidered on January 24, and 25, when Col. Johnson wished to amend the resolution so that it would provide for inscribing on the flag the words "West Virginia rescued from tyranny." "In 1861," added Hagan, who rose from the opposite side. But while various members were debating the probable expense which would be incurred by the purchase of a flag, Mr. Henry Pike who, looking after coal land in that region, happened to be present solved the question by offering a flag as a gift to the convention. Whether or not Pike's offer was out of pure generosity or not, the convention accepted it, voted its thanks to Mr. Pike, and ordered the sergeant at arms to raise the flag over the convention. On February 19 the flag arrived, and after it was seized upon frantically by the twelve apostles and kissed by some of them it was hoisted over the convention hall. [Journal, pp. 43, 44, 57, 62-64, 73, and 115.]

the year because they could not get store tea—said that without railroads residence in West Virginia would be about as desirable as residence at the North Pole.⁷³

The legislature was forbidden to pass special acts in a long list of additional cases including the following: sale of church property or property held for charitable uses; locating or changing county seats; chartering, licensing, or establishing ferries; remitting fines, penalties or forfeitures; changing the law of descent; regulating the rate of interest and releasing taxes. By this constitution the state, in addition to the prohibition of 1863 which prevented it from holding stock in any bank, was prohibited from holding stock in any company or association in the state or elsewhere, formed for any purpose whatever.

The only new power given to the legislature (a power which remained inoperative for thirteen years) was that of taxing privileges and franchises of corporations and persons which in the constitution of 1863 had been withheld largely through the fear that a corporation tax would discourage corporate capital which was then so much needed to build up the new state.

The governor and all the executive officers were to serve for four years, and, with the exception of the secretary of state, were to be elected by the people. No lieutenant-governor was provided. In case the governor was unable to act, the duties fell upon the president of the senate or the speaker of the house; and, if neither should be qualified, the legislature was given the power to appoint unless the vacancy should occur in the first three years of the term, in which case an election by the people was required.⁷⁴

The judicial system, entirely reorganized, consisted of a supreme court of appeals, a circuit court, county and corporation courts and justices of the peace. The supreme court of appeals, a rotary body consisting of four judges elected by the people for twelve years, could render no decision which should be considered as binding authority upon any inferior court except in the particular case decided unless the decision was concurred in by three judges. The number of circuits was fixed at nine and a provision forbade the legislature to increase that number until after 1880. After much debate, in which Osburn humorously suggested that there was no way out of the difficulty but to put the office up to the lowest bidder, the salary of judges of the supreme court of appeals was raised from \$2000 to \$2250 and of circuit judges from

73. Kanawha Daily, Feb. 13 and 26, 1872. "

74. This provision is peculiar to West Virginia. Stimson, p. 243.

WEST VIRGINIA DIVISION OF CULTURE AND HISTORY

WV
A&H

West Virginia Archives & History



A State of Convenience

THE CREATION of WEST VIRGINIA

An On-Line Exhibit
West Virginia Archives and History

Chapter One **East vs. West**

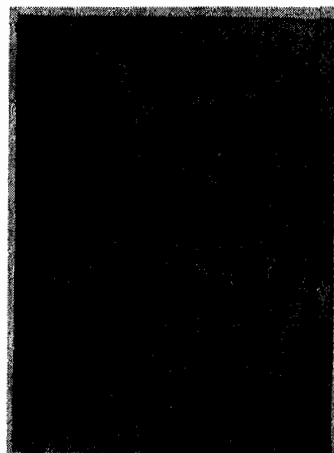


East vs. West
Howe's History of Virginia

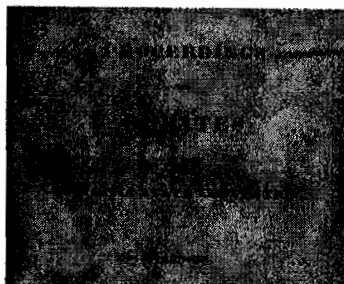
From the formation of the earliest communities, sectionalism developed between western and eastern Virginia. The Virginia State Constitution, adopted in 1776, granted voting rights only to white males owning at least 25 acres of improved or 50 acres of unimproved land. This reflected the interest of eastern Virginia, discriminating against the emerging class of small land owners in western Virginia. Furthermore, the constitution delegated a disproportionate representation in the state General Assembly to eastern Virginia by allowing only two delegates per county, regardless of population. Only four of the state's twenty-four senate districts were west of the Blue Ridge Mountains. In a letter to the *Richmond Examiner* in 1803, under the pseudonym "A Mountaineer", Harrison County delegate John G. Jackson condemned both the property qualifications and the unbalanced representation. Because only white men who owned land were allowed to vote and many western Virginians did not own the land on which they lived, they did not have the right to vote. In 1816, Thomas Jefferson called for representation based on white population, free white male suffrage, and popular election of state and local officials.

Delegates from the Shenandoah Valley and regions westward attended conventions held in Staunton in 1816 and 1825. In general, these failed to produce any long-term answers to the problems. In response to the earlier

conventions, the Virginia General Assembly passed a number of acts for the benefit of western Virginia. The reapportionment of the Senate based upon white population gave the western region greater representation. Previously, representation was based on total population, including slaves. Due to the large slave population of eastern Virginia and the general absence of slaves in western Virginia, representation in the General Assembly favored the East. In response to western demands, a Board of Public Works was created to legislate internal improvements, providing hope of developing more roads and canals in the West. The General Assembly also established the first state banks in western Virginia at Wheeling and Winchester.



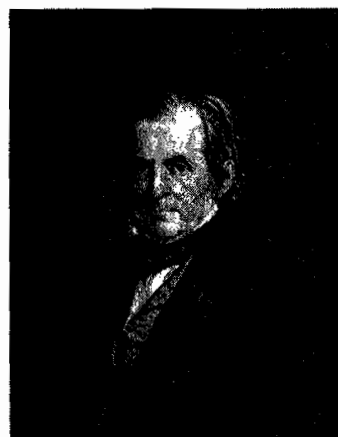
A slave gang brought up in Virginia and being transported to Kentucky, in 1847.
Sketch by Joseph H. Diss Debar
Diss Debar Collection (Ph79-191)



In 1828, western demands for reform led to passage of a popular referendum on a constitutional convention. The constitutional convention of 1829-1830 opened in Richmond on October 5, 1829, attended by such prominent Virginians as James Madison, James Monroe, John Marshall, and John Tyler. Western demands for free white male suffrage, representation based on white population, and the direct election of state and local officials were not met, as eastern Virginia conservatives defeated virtually every major reform. Statewide, the new constitution was approved by a margin of 26,055 to 15,566, although voters in present-day West Virginia rejected it 8,365 to 1,383. Calls for secession began immediately, led by newspapers such as the *Kanawha Republican*.

Over the next twenty years, the General Assembly eased some of this sectional tension. Nineteen new western counties were organized, giving the region greater representation. A number of internal improvements were made in the West, including the Staunton-Parkersburg Turnpike and the Northwestern Turnpike.

In 1831, the issue of African Americans came to the forefront following Nat Turner's raid, which killed sixty-one whites in Southampton County, Virginia. That same year, William Lloyd Garrison first printed his newspaper, *The Liberator*, marking the beginning of an organized national movement to end slavery, called abolitionism. Some abolitionists disapproved of slavery on a moral basis. Others, including prominent western Virginia political leaders, supported abolitionism because they felt slaves were performing jobs white laborers should be paid to do. Washington College President Henry Ruffner, the son of Kanawha Valley salt industry pioneer David Ruffner and a slaveholder himself, wanted to end slavery in trans-Allegheny Virginia in order to provide more paying jobs for white workers. He outlined this theory in an address delivered to the Franklin Society in Lexington, Virginia, in 1847. His speech, later printed in pamphlet form and distributed nationally, stated that slavery kept white laborers from moving into the Kanawha Valley.



Henry Ruffner

Massachusetts abolitionist Eli Thayer sought to demonstrate that free labor was superior to slave labor. He established an industrial town at Ceredo in Wayne County, beginning in 1857. The laborers, white New England emigrants, were all paid for their work. The experiment failed when some investors were unable to contribute and a national economic depression restricted the availability of additional money.

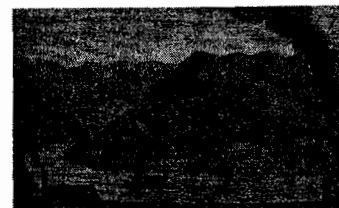
In 1850, the year that Congress adopted extensive compromises to ease the



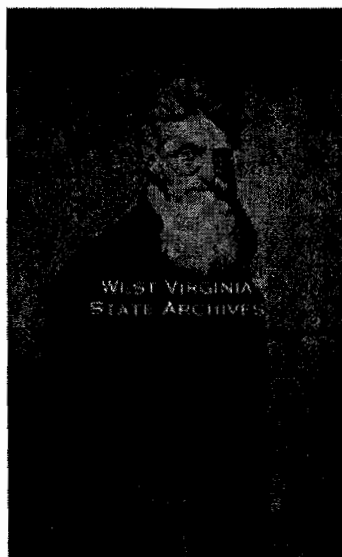
Joseph Johnson of Harrison County

growing tensions between North and South in the country, Virginia delegates once again met in Richmond to settle problems between East and West in the constitutional convention of 1850-1851. Several of these delegates rose to political prominence, including Joseph Johnson (the first Virginia governor from Trans-Allegheny Virginia), Charles J. Faulkner, Gideon D. Camden, John Janney, John S. Carlile, Waitman T. Willey, Benjamin Smith and George W. Summers. Eastern Virginia conservatives reached agreement with the West on the major issues remaining from the 1829 convention. All white males over the age of twenty-one were given the right to vote regardless of whether they owned property. The convention also approved the election of the governor and judges by the people. Delegates, including many from western Virginia, agreed to a provision allowing for property to be taxed at its total value, except for slaves, who would be valued at rates well below their actual worth.

Over the next few years, the state government tried to gain support from western Virginia by completing various internal improvements. However, the 1857 national depression defeated these efforts to improve western Virginia's economy. The salt industry in the Kanawha Valley gradually collapsed. Mills and factories throughout all of present-day West Virginia were forced to close. Yet, due to the 1850 Constitution, eastern and western Virginians seemed closer politically than they had been at any time in history.



Kanawha Salt Works



John Brown

On October 16, 1859, abolitionist John Brown and his followers, determined to establish a colony for runaway slaves in Virginia, launched a raid on the United States Armory and Arsenal at Harpers Ferry. Brown and his men were successful in seizing the armory, but news of the raid got out, and they were forced to withdraw into an engine house, where the surviving members were captured on October 18. Brown's raid brought national attention to the emotional divisions concerning slavery, and when he was hanged on December 2, he was mourned as a martyr by many in the North, while Southerners were outraged by his acts. John Brown's raid brought emotions to a fever pitch, and was one of the key events on the road to a tumultuous civil war. This conflict would provide westerners the opportunity to break away from Virginia and form a new state.

Primary Documents:

[Staunton Convention of 1816](#)
[1829-30 Virginia Constitutional Convention](#)
[Address to the People of West Virginia](#)
[John Brown](#)

Other Sources:

["The Cleavage Between Eastern and Western Virginia"](#)
[African-American Population of Present-Day West Virginia Counties in 1860](#)

PROCEEDINGS

AND

DEBATES

OF THE

VIRGINIA STATE CONVENTION,

OF

1829-30.

TO WHICH ARE SUBJOINED,

THE NEW CONSTITUTION OF VIRGINIA,

AND THE

VOTES OF THE PEOPLE.

... government, or the blessing of liberty, can be reserved to the people, but by a

important duties as would then devolve upon the Legislature, ought not to be performed, except by the wisest and most experienced of the sons of Virginia.

It is said, that the people may be safely trusted on this subject, and that they are the best judges of the fitness of candidates for office, and that there is no danger of their electing a man to the Senate who is not well qualified for the station. I should be the last man to question the competency of the people to decide upon the qualifications of candidates for office; or to impose any improper restrictions upon the exercise of their discretion; but the arguments of gentlemen upon this subject prove too much. The restraints imposed by a people upon themselves in their fundamental laws, are restraints imposed by them for their own benefit. If no restraint should be imposed upon the right of selection by the people, why do gentlemen propose that Senators should be *twenty-five* years of age? Why not trust the people to elect Senators at twenty-one years of age? Nay, Sir, even less than twenty-one; for, I dare say that *some young men might be found* even under twenty-one, who would, possibly, make good Senators.

The same argument would apply with equal force to the Constitution of the United States. The wise men who made that Constitution, required the President to be thirty-five, Senators thirty, and Representatives twenty-five years of age; and the Constitution having been adopted by the people, shews that they approved of those limitations on their own discretion. The united voice of the people of the United States would not be sufficient to elect to the Presidential Chair the most distinguished man in the nation, unless he were thirty-five years of age. Why not remove all these Constitutional restraints, and confide to the discretion of the people and to the State Legislatures, the power of electing a President, Senators and Representatives, of whatever ages they choose? The people of other States have thought it wise to impose limitations upon themselves in their Constitutions upon this subject. In four of the States, Senators are required to be thirty years of age, in one twenty-eight, in four twenty-seven, in one twenty-six, and in all the rest of the States, twenty-five years of age are required. In two of the States, Representatives are required to be twenty-five years of age, in three twenty-four, and in one twenty-two.

But, Mr. Chairman, I consider it much more important to require Delegates to be twenty-five, than Senators thirty years of age. Between the ages of twenty-one and twenty-five, young men ought to be engaged in study, and in preparing themselves to become members of the Legislature; and the observation of every man who has been a member of the House of Delegates, I am sure, has furnished him with opportunities of seeing young men under twenty-five years of age in that House, who had not sufficient experience and judgment to fit them to be Legislators.

I know that some gentlemen are opposed to changing the existing state of things, unless great practical evils have resulted from them. Innovations upon established regulations on important subjects, I admit, ought to be cautiously made; but in the proposed changes, no possible danger can arise. If the proposed changes would exclude some young men well qualified, they would also, probably, exclude more who had not sufficient experience for the important duties of legislation; and those who were qualified, would be still better qualified, after a few more years devoted to the acquisition of knowledge and experience.

The question being taken, the motion of Mr. Bayly was negatived—Ayes 37, Noes 45. (Mr. Marshall Aye, Messrs. Madison and Monroe, No.)

The seventh resolution was then read as follows:

"Resolved, That no person ought to be elected a member of the House of Delegates of this State, who is not at least twenty-five years of age."

Mr. Henderson moved to amend it, so as to make the age of a Delegate twenty-one instead of twenty-five.

Mr. Doddridge opposed the motion, and it was lost—Ayes 37. (Mr. Madison among the Ayes.)

On motion of Mr. Maroer, the Committee then proceeded to the consideration of the report of the Executive Committee.

The first resolution having been read as follows:

"Resolved, That the Chief Executive Office of this Commonwealth, ought to be filled by a *trustee*."

gentleman from Brooke, is to give the election to the qualified voters. If this amendment were rejected, the Constitution would stand as it now stands. He wished to know if such be the fact.

At the suggestion of the Chair, who said that if no proposition to amend were carried, the Constitution would remain as it was, Mr. Leigh withdrew his motion to amend.

Mr. Leigh then called upon gentlemen for some reasons, founded on practical views, for the change they required. Upon them was the *onus probandi*.

Mr. Powell regretted that the state of his voice prevented him from taking the course which he otherwise would, by presenting the amendment which he had himself moved to this whole report. Mr. P. then moved to pass by the resolution, and to take up the other reports.

Mr. Doddridge said he did not know that the gentleman from Chesterfield had any right to call upon him to answer interrogatories. It was a practice growing upon the Convention. He had been a few days ago charged with being cognizant of a motion in the House of Delegates, when he was not a member of that branch, but he was not permitted to explain, and to deny that he was a member; and the gentleman then proceeded to ask him questions as to what he would do in certain cases. He denied this right, and declared that he was at liberty to address the Committee on the subject of his proposition, or to submit it to a silent vote. He suggested to the gentleman from Frederick, to permit the question now to be taken on the report, and reserve his argument for a future stage of the proceedings.

Mr. Powell persisted in his motion, and gave the reasons which induced him to view the election of the Governor, as the most important question which was likely to arise in the consideration of this report.

Mr. Mercer said that as it was at his instance, the report of the Executive Committee was taken up, he felt it necessary to make a few observations, with respect to the motion made by the gentleman from Frederick, (Mr. Powell). If he thought that the gentleman from Frederick, from his present indisposition, would do any injustice to the advocacy of the substitute which he submitted, for the Executive report, he certainly would not press the decision at the present time. But if that gentleman would reflect and perceive the converse of his argument, he would find that we were involved in the same difficulty from which he wished to extricate himself. On this principle we cannot proceed one step; we cannot move at all. It was objected the other day when it was proposed to take this report under consideration, that it would be improper, until we had settled the whole basis of Representation. There is no report, which does not, in part, involve in its consideration, that of another report. The Executive depends on the Legislative, and the Judicial on both the Legislative and Executive Departments. We cannot decide any proposition separately: every question is argued hypothetically in the Committee, and inferences are drawn in this manner. Suppose the Executive power is to be enlarged, then we are to consider the expediency of vesting the power of appointment in the people; if the Executive powers remain as they are, then we must consider whether he is to be appointed according to the present Constitution. At last when we have settled the question in the Committee, we then go into the House, with a full knowledge of the whole principles of the proposition, and we can vote and decide, not hypothetically. If then it was decided, that the Executive is to be elected by the people, he would vote to give him powers to act independently of the Legislature. If the Executive was made the creature of the Legislature, he would regulate his vote accordingly. He said the gentleman from Frederick, would have an opportunity to offer his substitute hereafter. The Executive report will be open to amendment: he hoped, therefore, he would withdraw his motion, so that the report might be considered.

Mr. Leigh asked, if it was or was not parliamentary, to ask of the friends of a proposition to give their reasons for it.

The Chair said there was no parliamentary rule on the subject. The only rule is to avoid personality, and imputation of motive.

Mr. Leigh said, he was sure he had attributed no personal motive. He asked the gentleman from Bucks if he supposed he had any authority for saying that.

man to look at the conduct of any one in an unfavourable view; and was as ready to make this explanation to the gentleman from Chesterfield, as to any gentleman. He said, that as this proposition was to be submitted to the people, and the subject had been sufficiently discussed, he had a right to leave the question to be taken, without giving any reasons.

After an explanation from Mr. Leigh and Mr. Doddridge, Mr. Powell withdrew his motion to pass by the proposition.

Mr. Doddridge said, he would now assign his reasons for the proposed change in the Executive, and he would do so, without adverting to any of the existing abuses in its constitution. In the first place, he objected in theory to its power of appointment, as sufficient to show that the Executive Department should undergo a new organization. If we are agreed on any one principle which has been discussed amongst us, it is that the Executive, Legislative, and Judicial Departments of the Government, should be separated, and that the duties of neither should be exercised by another department. This, with some exceptions, would be admitted as a general rule.

What is the Executive of Virginia? It is nothing more nor less, than an emanation of the Legislative power. He is appointed every year, and is responsible, only to those to whom he is looking for a re-appointment. And the Executive Magistrate by an interpretation of the Constitution, has been deprived of all Executive power. By a construction which was given to it, in the time of General Wood, it was decided, that when the Executive Council was divided, the Governor had no power to give a casting vote. This was the prevailing doctrine to the present time. The Governor requires no other qualification, than to be a gentleman, to be enabled to fill his office. All he has to do, is to write his name when commanded; and not till he is commanded by the Executive Council, can he do so. He is the creature of the Legislature and not of the people, and he is responsible to the Legislature alone, except when the process of impeachment is resorted to; and from the tenure of office, it would be useless. He understood from the Notes of Mr. Jefferson, that the Executive was nothing but an emanation of the Legislative power. He had not the Notes here now, but he had read them so often, and they made such an impression on him, that he could readily give their substance. Mr. Jefferson proved, that the Executive was not an ordinate branch of the Government; that it was not responsible to the people. The conclusion was, that the Executive power resulted in the Legislative body. It was asked had the Judicial body a sufficiency of independence: Their tenure is, *quamvis bene meritis*. This did not make a Judge independent, because after providing an adequate salary, the words, "which shall not be denied during the continuance of office," are omitted.

The Legislature could thus starve a Judge out of office. The Judiciary is in fine dependent on the Legislature. What are the words of Mr. Jefferson? "When all the powers of Government, Legislative, Executive and Judicial, result to the Legislative body, and the concentration of them is in the same hands, it is a precise definition of despotic power." Independent of this authority, is it not so in fact? What can prevent the Executive Council from doing an unpopular act, since they are not further accountable to the General Assembly, and have no motive to induce them to act properly, except that the General Assembly may not re-elect them?

Another defect is, that effectually and efficiently they are in no manner responsible. In the Council, which consists of eight members, unless there is a majority on every question, the Governor has no responsibility. The Executive Council is periodically removed, not appointed, and this was a most odious and disgusting office. Two of the eight must go out, and this circumstance creates amongst them a disposition to elect one in the General Assembly against each other. The result is, the dishonour of him who is removed from office.

Among the complaints which brought this Convention together, and which were published in the Gazette of the country, was one against the Executive. After the extension of the Right of Suffrage, what the people next desired, was the establishment of an independent, responsible Executive. If the Executive Council be abolished, the Governor will be responsible for whatever abuse may be committed, and there will be no necessity to refer for the Ayes and Noes to the Executive Council back. The objections against the Executive, would come with greater force, especially if he be invested with the power of making appointments.

to the administration of the Literary Fund, and of the fund for Internal Improvement; the distribution of which the Executive possesses, not in virtue of any constitutional power it enjoys in this respect, but by an enactment of the Legislature. The consideration surely shews the necessity of there being a greater responsibility on the part of the Executive. He had briefly and imperfectly assigned his objections to the present system. As to the power of impeaching the Executive, it was futile. We were not an impeaching people. There was but one impeachment which ever took place here, and that was made at the request of the gentleman himself. But as to the impeachment of a Governor, whose tenure of office is but one year, it was useless, as his time would expire before the impeachment could be effected.

Mr. Morgan said, he would suggest an amendment to his colleague, to strike out the word "three," and leave a blank. He had intended to vote for the appointment of the Executive by the Legislature, if the election was made annually. His reason for making this motion was, to have the most responsible Executive in the United States, which he thought would be thus attained. The blank may be again filled with "two," or with "three," if the Committee prefer the latter number. For himself, he preferred that the appointment should be made every two years, if the Executive is to be elected directly by the people; but if by the General Assembly, he preferred an annual election, as the Executive was thus held as a tenancy from year to year, and therefore more responsible. An annual election by the people would be inconvenient; an annual election by the Legislature, constituted as that body now is, he would never consent to. He would move that the word "three" be stricken out.

Mr. Doddridge accepted the modification proposed by his colleague.

Mr. Morgan said, he would further remark, that he was opposed to the augmentation of power in the Executive branch of the Government. It was dangerous. He thought the weakest Executive in the world to be the best. It was the safest. No original good whatever can result to the people from the power of this branch. It is the business of the Executive to see that the laws shall be faithfully executed. All good resulting from Government to the people must originate and come from the Legislature. It can originate no where else. But so far as the Executive is concerned in the execution of the laws, there ought to be a high responsibility. He would vote for the amendment, but against every thing calculated to augment Executive power or influence. He wished to keep that branch feeble.

Mr. Doddridge accepted the motion as a modification of his amendment, so as to leave the term of service blank for the present.

Mr. NICHOLAS addressed the Committee as follows:

It appears to me, Mr. Chairman, that we are passing over vital interests, rapidly, and without due consideration. This is one of the most important branches of the Government, and a sense of duty impels me, to state the result of my reflections on the subject. There is also, a relation, in which I stand to this question, which renders it proper that I should address the Committee. I had the honour to submit to the Executive Committee, of which I was a member, a proposition relative to the Executive Department; which since, with the consent of the Convention, was laid on the table, and referred to this Committee. I have announced my intention, to submit it as a substitute for a part of the report of the Executive Committee. The resolution now before the Committee, is limited to the declaration, that the Governor ought to be elected by the people, instead of the Legislature. But there are other matters connected with the organization of the Executive Department, which have been already adverted to in debate, and which, in truth, will have an important bearing on the question now before the Committee. The proposition I submitted, was, that the ninth and tenth sections of the Constitution should be retained, and that the eleventh should be substituted by a new section, which provides for retaining four members of the Council, one of them to be chosen and act as Lieutenant Governor; half the Council to go out at the end of two years, the other two at the end of four, so that

partment. I take it for granted, that every gentleman would think it proper, to construct the Executive Department on principles suited to republican institutions. The Government from which we were separated by the Revolution, was one which concentrated inordinate authority in the hands of a single Executive Magistrate. The monarch had the powers of war and peace, was the fountain of honour and office, and could increase the House of Peers, who are a body of hereditary nobles, to an unlimited extent. Look at the preamble to your Constitution, which enumerates the causes which induced our ancestors to separate from Great Britain, and you will see, that our revolution was to a great extent, founded on the tyrannical and oppressive exercise of the vast powers and prerogatives of the British King. Smarting as our ancestors did, under what they declared to be "a detestable and insupportable tyranny," it was natural as well as proper, that in the Government they were about to establish, they should endeavour to conform the structure of the Executive Department to the genius of a Republic. But, now, we are about, it would seem, to depart from these principles. We are to have a splendid Executive. It is contemplated to vest this authority in a single magistrate; and the appointment to all offices in the gift of this Department, is to be given to him, as some contend, without controul, and as others maintain, with no other check, save the power of rejecting his nominations by the Senate. I am not prepared for this. The gentleman from Monongalia, (Mr. Morgan,) says he is for a feeble Executive. This is not precisely the phrase I would adopt. I wish the Executive to have power enough to execute the laws and no more. I would not invest it with splendor, or extensive patronage, or make it the mark, or instrument of inordinate ambition. Our Executive as at present constituted, is simple and unostentatious. Your Governor is nothing more than a citizen called upon, temporarily, to execute the laws; this done, he returns to the level of the great body of the people. Whilst in office, he has with the advice of the Council all the power which is necessary to give efficacy to your Government. What more can be desired? If you invest all power and extensive patronage in a single magistrate, you create a petty monarchy. The gentlemen who are on the other side of this question, admit the propriety of interposing checks to prevent the abuse of power in the other Departments of Government; but the framers of our Constitution felt that these checks were equally, indeed, more necessary in the Executive. The check they interposed, was the Executive Council. This is a constitutional body, not dependent on the Governor.

The President of the United States has enormous powers and patronage, and he has no constitutional Council. The Constitution authorises him to call for the opinion of the principal officer, in each of the Executive Departments, upon any subject relating to the duties of his office; and usage has erected these officers into what is called the Cabinet. But there is all the difference in the world between such a body, and a Council organized as ours. These Executive officers hold at the will of the President, and he can act without, or contrary to their advice. The Governor can do no important act, without the advice of Council. They not only know his acts, but they understand the motives and secret springs which set these acts in motion. If you entrust power to one man to act in the dark, and without the possibility of determining his motives, you give facilities and temptations to do wrong, you enable him to indulge a spirit of favouritism, and to confer offices, in promotion of objects of personal ambition.

By a constitutional Council, you superadd to the responsibility of the Governor, the means, if not of preventing the formation of improper schemes, yet of their being carried into effect.

But, it is proposed to give the election of Governor to the people. It seems to me, that the power is essentially exercised by the people, when carried into effect by their immediate representatives. Both the Governor and the members of the Legislature are elected for short periods, which constitutes a sufficient security for the proper ex-

said, that the existence of the Council destroys all responsibility in the Governor. This is not so. The Governor cannot act without the advice of Council, and that advice is to be spread on their journal, signed by each member, and laid before the Legislature when required; besides, any member may enter his protest. The Governor and Council then, are both responsible; the former for following, or not following their advice, and the latter for that which they give. I beg gentlemen before they adopt a system which gives all power and patronage to one man, and the election of him to the people, to turn their eyes to the operation of this system in our sister States. Look at New York, Pennsylvania and Kentucky. It appears from the debates of the Convention in New York, that before the recent change in her Constitution, about eight thousand offices, were in the gift of the Executive, including militia appointments, prothonotaries and a multitude of smaller offices. Whenever the election comes round, in some of these States, the community is convulsed to the centre. Every man is made an office-hunter and dabbler in elections. As soon as a new Governor is elected, all the incumbents in office go by the board. And then begins a new struggle, so that the State is kept in continual ferment and agitation. The inevitable effect of these systems is, not only to destroy the peace and happiness of the people, but to undermine their political morality. Under our plan, the machine of Government works so smoothly, that whilst our Executive possesses power all-sufficient to execute the laws, no sensation is felt on the change of the Chief Magistrate, and it is not unlikely that many citizens of the State are frequently ignorant who the Governor is, unless he happens to be a man who has acquired distinction in other political stations.

But it is objected by the gentleman from Brooke, (Mr. Doddridge,) that in giving the election of the Governor to the Legislature, you violate that valuable political maxim, which requires the different departments to be kept separate and distinct. If the gentleman will advert to the forty-seventh Number of the Federalist, in which this subject is discussed, he will find that the true meaning of the maxim laid down by Montesquieu, is "that where the *whole power* of one department is exercised by the same hands which possess the *whole power* of another department, the fundamental principles of a free Constitution are subverted." And that he did not mean, "that these departments ought to have no *partial agency* in, or no *control over*, the acts of each other." And this Number also demonstrates by reference to the British Government, and the Governments of the different States (to which may be now added, that of the United States,) that it is extremely difficult, if not impossible, to prevent the powers of one department from running into those of another. Besides, how does the power of appointment of Governor, confer on the Legislature, Executive power in the sense in which the maxim before quoted, can alone apply? As well might it be contended, that the appointment of the Judges, confers on the Legislature, Judicial powers.

But the gentleman from Brooke, says the Governor has no power; he is a mere cypher. I do not think so. He is not bound to obey the advice of the Council. It is true he cannot act without their advice, but he can, after they give it, execute it or not, on his responsibility. This is the uniform construction which has been put on the Constitution. Besides, my plan proposes, that when the Council is divided, the Governor shall have the casting vote. How does it appear, that the Governor and Council have not adequate power? Have they not the power to execute the laws? And have not the laws been always executed? Why give them more power? It can only be necessary to confer splendor and patronage. The powers of the Executive are very considerable. It must be so in every Government in a State as large as this. The power of executing the laws must always be commensurate with the legislation of a country. They have the power of appointing magistrates, sheriffs, all the militia officers, and many others, and the power of filling vacancies in various offices during the recess of the Legislature. They have also a general superintendence of all the departments, subordinate to them, the Treasurer's office, those of the Auditors, the Penitentiary, to which may be added, the Boards of Internal Improvement and the Literary Fund. Can any one man discharge these various important

The idea advanced by some, that the Council may be dispensed with, by taking the advice of the Treasurer, Auditors, and some other officers of Government, is not, in my mind, one which can be sustained. The objects for which these officers are selected, are entirely distinct, and they may require different qualifications. But what seems conclusive, is, that these officers are under the supervision, and to a certain extent, the controul of the Executive, and have already laborious duties to perform, which occupy all their time. It is the opinion of others, that we should conform our Executive to the model of that of the United States. I should be more disposed, had I the power, to reverse this proposition. The powers of the Federal Executive are enormous, and its patronage most extensive. For this cause, we see the nation frequently convulsed in the choice of this magistrate. The office of President overshadows every other part of the Government. His election absorbs the wishes and thoughts of a large portion of the nation. Other elections, and political measures of vital importance, are too often made subservient to the advancement of the interests of favorite candidates for the Presidency. It is much to be feared, that the conflicts which take place for this glittering object of ambition, may more endanger the permanency of our General Government than any thing else which can happen to it. The remedy would be found in diminishing the power, or, at least the patronage of the Executive of the United States.

It may be well supposed, however, that there are some of the powers which are conferred on the Executive of the Union which may be necessary to it, but would be entirely otherwise, as applied to the State Government. In the United States, are invested, the powers of war and peace, the regulation of commerce, and the management of our external relations. The cares of the State Government are principally confined to the regulation of our internal affairs. And for the management of these, the powers we have given the Executive have been found amply sufficient, and to have been judiciously arranged, under the existing Government.

The gentleman from Brooke says, that the impeachment to which the Governor is liable, is a mere nominal thing; it contains no terror, because he can only be impeached after his office ceases. But will the gentleman recollect, that if convicted on impeachment, he may be disabled to hold any office in future, and subjected to such pains and penalties as may be prescribed by law?

The gentlemen who are against the Council, under any modification, have not agreed upon what they will substitute for it. Now, I am persuaded, that whenever they bring forward a plan, it will be found that it will not be as efficient, or economical, as the small Council I propose to be retained.

The Executive Committee have decided there shall be a Lieutenant Governor, but have as yet, assigned him no duties.

He must, if the Council be abolished, be a salaried officer. There must be also, some other subordinate and auxiliary officers, to transact the public business. By my plan, the Lieutenant Governor is to be one of the Council, as at present, and to receive no additional salary.

The Committee will, however, be better enabled to decide, on the intrinsic, or comparative merits, of what is intended to be substituted, for a Council under any modification, when gentlemen shall see fit, more fully to develop their views on the subject.

Mr. HENDERSON remarked, that it was his misfortune, again to differ with the estimable gentleman who had just favored the Committee with his views. I will not, said Mr. H., detain the Committee long, because I am aware, that what I may say, will come recommended neither by weight of reputation, nor by any grace of manner. I agree, Mr. Chairman, that the friends of the proposition under consideration, are bound to give reasons to this Convention, and to the people themselves, for the contemplated change, and sound and strong reasons too. Unless this can be done, let the existing mode of election continue. Such, I admit, is the course of prudence and common sense. It really does appear to me, Sir, that it were not difficult to place this matter in a point of light, clearly shewing the propriety of electing the Chief Magistrate of the State by the citizens in their primary capacity. The gentleman from this city, who has just taken his seat, has amused us with something like a declamation upon the topic of a splendid Executive. In this, the gentleman has leaped before he reached the stile. He has invested the Governor with an imaginary splendor; and, having done this, he has very gravely proceeded to prove that this gorgeous personage ought not to be elected by the people. Now, Sir, this is varying the question as it is presented to us. We contend that the Governor should be elected by

CONSTITUTION OF VIRGINIA—1850
BILL OF RIGHTS

- I. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.
- II. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.
- III. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.
- IV. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator or judge, to be hereditary.
- V. That the legislative, executive, and judicial powers should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.
- VI. That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.
- VII. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.
- VIII. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

IX. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

X. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

XI. That in controversies respecting property, and in suits between man and man, the ancient trial by jury of twelve men is preferable to any other, and ought to be held sacred.

XII. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

XIII. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

XIV. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia ought to be erected or established within the limits thereof.

XV. That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by a frequent recurrence to fundamental principles.

XVI. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

CONSTITUTION

Whereas the delegates and representatives of the good people of Virginia, in convention assembled, on the twenty-ninth day of June, in the year of our Lord one thousand seven hundred and seventy-six, reciting and declaring, that whereas George the Third, king of Great Britain and Ireland and elector of Hanover, before that time entrusted with the exercise of the kingly office in the government of Virginia, had endeavored to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good; by denying his governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and when so suspended, neglecting to attend to them for many years; by refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the legislature; by dissolving legislative assemblies repeatedly and continually for opposing with

manly firmness his invasions of the rights of the people; when dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head; by endeavoring to prevent the population of our country, and for that purpose obstructing the laws for the naturalization of foreigners; by keeping among us, in time of peace, standing armies and ships of war; by affecting to render the military independent of and superior to the civil power; by combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation, for quartering large bodies of armed troops among us, for cutting off our trade with all parts of the world, for imposing taxes on us without our consent, for depriving us of the benefits of the trial by jury, for transporting us beyond seas to be tried for pretended offences, for suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever; by plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people; by inciting insurrections of our fellow-subjects with the allurements of forfeiture and confiscation; by prompting our negroes to rise in arms among us, those very negroes whom, by an inhuman use of his negative, he had refused us permission to exclude by law: by endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions of existence; by transporting hither a large army of foreign mercenaries to complete the work of death, desolation, and tyranny, then already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation; by answering our repeated petitions for redress with a repetition of injuries; and finally, by abandoning the helm of government, and declaring us out of his allegiance and protection; by which several acts of misrule the government of this country, as before exercised under the crown of Great Britain, was totally dissolved, did, therefore, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy country would be reduced, unless some regular, adequate mode of civil policy should be speedily adopted, and in compliance with the recommendation of the general Congress, ordain and declare a form of government of Virginia;

And whereas a convention held on the first Monday in October, in the year one thousand eight hundred and twenty-nine, did propose to the people of the commonwealth an amended constitution or form of government, which was ratified by them;

And whereas the general assembly of Virginia, by an act passed on the fourth of March, in the year one thousand eight hundred and fifty, did provide for the election, by the people, or delegates to meet in general convention, to consider, discuss, and propose a new constitution, or alterations and amendments to the existing constitution of this commonwealth; and by an act passed on the thirteenth of March, in the year one thousand eight hundred and fifty-one, did further provide for submitting the same to the people for ratification or rejection:

We, therefore, the delegates of the good people of Virginia, elected and in convention assembled, in pursuance of said acts, do propose to the people the following constitution and form of government for this commonwealth:

Article I

BILL OF RIGHTS

The declaration of rights, as amended and prefixed to this constitution, shall have the same relation thereto as it had to the former constitution.

Article II

DIVISION OF POWERS

The legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to either house of assembly.

Article III

QUALIFICATION OF VOTERS

Section 1. Every white male citizen of the commonwealth, of the age of twenty-one years, who has been a resident of the State for two years, and of the county, city, or town where he offers to vote for twelve months next preceding an election, and no other person, shall be qualified to vote for members of the general assembly and all officers elective by the people; 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. And no person shall have the right to vote who is of unsound mind, or a pauper, or a non-commissioned officer, soldier, seaman, or marine in the service of the United States, or who has been convicted of bribery in an election, or of any infamous offence.

Sec. 2. The general assembly, at its first session after the adoption of this constitution, and afterwards as occasion may require, shall cause every city or town, the white population of which exceeds five thousand, to be laid off into convenient wards, and a separate place of voting to be established in each; and thereafter no inhabitant of such city or town shall be allowed to vote except in the ward in which he resides.

Sec. 3. No voter during the time for holding any election at which he is entitled to vote shall be compelled to perform military service, except in time of war or public danger; to work upon the public roads, or to attend any court as suitor, juror, or witness; and no voter shall be subject to arrest under any civil process during his attendance at elections, or in going to and returning from them.

Sec. 4. In all elections votes shall be given openly, or viva voce, and not by ballot; but dumb persons entitled to suffrage may vote by ballot.

Article IV

LEGISLATIVE DEPARTMENT

Section 1. The legislature shall be formed of two distinct branches, which together shall be a complete legislature, and shall be called " the general assembly of Virginia."

HOUSE OF DELEGATES

Sec. 2. One of these shall be called the house of delegates, and shall consist of one hundred and fifty-two members, to be chosen biennially for and by the several counties, cities, and towns of the commonwealth, and distributed and apportioned as follows:

The counties of Augusta and Rockingham and the city of Richmond shall each elect three delegates; the counties of Albemarle, Bedford, Berkeley, Campbell, Fauquier, Franklin, Frederick, Halifax, Hampshire, Harrison, Jefferson, Kanawha, Loudoun, Marion, Monongalia, Monroe, Norfolk, Pittsylvania, Preston, Rockbridge, Shenandoah, and Washington shall each elect two delegates; the counties of Botetourt and Craig shall together elect two delegates. The counties of Accomack, Alexandria, Amherst, Appomattox, Barbour, Brunswick, Buckingham, Cabell, Caroline, Carroll, Charlotte, Chesterfield, Clarke, Culpepper, Dinwiddie, Fairfax, Floyd, Fluvanna, Giles, Gloucester, Goochland, Grayson, Greenbrier, Hanover, Hardy, Henrico, Henry, Highland, Isle of Wight, Jackson, King William, Lee, Lewis, Louisa, Lunenburg, Madison, Marshall, Mason, Mercer, Mecklenburg, Montgomery, Morgan, Nansemond, Nelson, Northampton, Page, Patrick, Pendleton, Pocahontas, Princess Anne, Prince Edward, Prince William, Pulaski, Putnam, Randolph, Rappahannock, Roanoke, Scott, Smyth, Southampton, Spotsylvania, Taylor, Upshur, Warren, Wayne, Wetzell, Wood, and Wythe, and the cities of Norfolk and Petersburg, shall each elect one delegate. The counties of Lee and Scott, in addition to the delegate to be elected by each, shall together elect one delegate.

The following counties and cities shall compose election districts: Alleghany and Bath; Amelia and Nottoway; Boone, Wyoming, and Logan; Braxton and Nicholas; Charles City, James City, and New Kent; Cumberland and Powhatan; Doddridge and Tyler; Elizabeth City, Warwick, York, and the city of Williamsburg; Essex and King and Queen; Fayette and Raleigh; Gilmer and Wirt; Greene and Orange; Greenville and Sussex; King George and Stafford; Lancaster and Northumberland; Matthews and Middlesex; Pleasants and Ritchie; Prince George and Surrey; and Richmond and Westmoreland ; each of which districts shall elect one delegate.

At the first general election under this constitution, the county of Ohio shall elect three delegates, and the counties of Brooke and Hancock shall together elect one delegate; at the second general election, the county of Ohio shall elect two delegates, and the counties of Brooke and Hancock shall each elect one delegate; and so on, alternately, at succeeding general elections.

At the first general election the county of Russell shall elect two delegates, and the county of Tazewell shall elect one delegate; at the second general election, the county of Tazewell shall elect two delegates, and the county of Russell shall elect one delegate; and so on, alternately, at succeeding general elections.

The general assembly shall have power, upon application of a majority of the voters of the county of Campbell, to provide, that instead of the two delegates to be elected by said county, the

town of Lynchburg shall elect one delegate, and the residue of the county of Campbell shall elect one delegate.

SENATE

Sec. 3. The other house of the general assembly shall be called the senate, and shall consist of fifty members, to be elected for the term of four years; for the election of whom the counties, cities, and towns shall be divided into fifty districts. Each county, city, and town of the respective districts, at the time of the first election of its delegate or delegates under this constitution, shall vote for one senator; and the sheriffs or other officers holding the election for each county, city, and town, within five days at farthest after the last election in the district, shall meet at the courthouse of the county or city first named in the district, and from the polls so taken in their respective counties, cities, and towns, return as senator the person who has received the greatest number of votes in the whole district. Upon the assembling of the senators so elected, they shall be divided in two equal classes, to be numbered by lot. The term of service of the senators of the first class shall expire with that of the delegates first elected under this constitution, and of the senators of the second class at the expiration of two years thereafter; and this alternation shall be continued, so that one-half of the senators may be chosen every second year.

Sec. 4. For the election of senators—

- I. The counties of Accomack and Northampton shall form one district.
- II. The city of Norfolk shall be another district.
- III. The counties of Norfolk and Princess Anne shall form another district.
- IV. The counties of Isle of Wight, Nansemond, and Surry shall form, another district.
- V. The counties of Sussex, Southampton, and Greensville shall form another district.
- VI. The city of Petersburg and the county of Prince George shall form another district.
- VII. The counties of Dimwiddie, Amelia, and Brunswick shall form another district.
- VIII. The counties of Powhatan, Cumberland, and Chesterfield shall form another district.
- IX. The counties of Lunenburg, Nottoway, and Prince Edward shall form another district
- X. The counties of Mecklenburg and Charlotte shall form another district.
- XI. The county of Pittsylvania shall be another district.
- XII. The county of Halifax shall be another district.
- XIII. The counties of Henry, Patrick, and Franklin shall form another district.
- XIV. The county of Bedford shall be another district.
- XV. The counties of Campbell and Appomattox shall form another district.
- XVI. The city of Williamsburg and the counties of James City, Charles City, New Kent, York, Elizabeth City, and Warwick shall form another district.
- XVII. The counties of Henrico and Hanover shall form another district.
- XVIII. The city of Richmond shall be another district.
- XIX. The counties of Gloucester, Matthews, and Middlesex shall form another district.
- XX. The counties of Richmond, Lancaster, Northumberland, and Westmoreland shall form another district.
- XXI. The counties of King and Queen, King William, and Essex shall form another district.
- XXII. The counties of Caroline and Spotsylvania shall form another district.

- XXIII. The counties of Stafford, King George, and Prince William shall form another district.
- XXIV. The counties of Fairfax and Alexandria shall form another district.
- XXV. The county of Loudon shall be another district.
- XXVI. The counties of Fauquier and Rappahannock shall form another district.
- XXVII. The counties of Madison, Culpepper, Orange, and Greene shall form another district.
- XXVIII. The county of Albemarle shall be another district.
- XXIX. The counties of Louisa, Goochland, and Fluvanna shall form another district.
- XXX. The counties of Nelson, Amherst, and Buckingham shall form another district.
- XXXI. The counties of Jefferson and Berkeley shall form another district.
- XXXII. The counties of Hampshire, Hardy, and Morgan shall form another district.
- XXXIII. The counties of Frederick, Clarke, and Warren shall form another district.
- XXXIV. The counties of Shenandoah and Page shall form another district.
- XXXV. The counties of Rockingham and Pendleton shall form another district.
- XXXVI. The county of Augusta shall be another district.
- XXXVII. The counties of Bath, Highland, and Rockbridge shall form another district.
- XXXVIII. The counties of Botetourt, Alleghany, Roanoke, and Craig shall form another district.
- XXXIX. The counties of Carroll, Floyd, Grayson, Montgomery, and Pulaski shall form another district.
- XL. The counties of Mercer, Monroe, Giles, and Tazewell shall form another district.
- XLI. The counties of Smyth, Wythe, and Washington shall form another district.
- XLH. The counties of Scott, Lee, and Russell shall form another district.
- XLI II. The counties of Boone, Logan, Kanawha, Putnam, and Wyoming shall form another district.
- XLIV. The counties of Nicholas, Fayette Pocahontas, Raleigh, Braxton, and Greenbrier shall form another district.
- XLV. The counties of Mason, Jackson, Cabell, Wayne, and Wirt shall form another district.
- XLVI. The counties of Ritchie, Doddridge, Harrison, Pleasants, and Wood shall form another district.
- XLVII. The counties of Wetzel, Marshall, Marion, and Tyler shall form another district.
- XLVIII. The counties of Upshur, Barbour, Lewis, Gilmer, and Randolph shall form another district.
- XLIX.. The counties of Monongalia, Preston, and Taylor shall form another district.
- L. The counties of Brooke. Hancock, and Ohio shall form another district.

APPORTIONMENT OF REPRESENTATION

Sec. 5. It shall be the duty of the general assembly, in the year one thousand eight hundred and sixty-five, and in every tenth year thereafter, in case it can agree upon a principle of representation, to reapportion representation in the senate and house of delegates in accordance therewith; and in the event the general assembly, at the first or any subsequent period of reapportionment, shall fail to agree upon a principle of representation and to reapportion representation in accordance therewith, each house shall separately propose a scheme of representation, containing a principle or rule for the house of delegates, in connection with a principle or rule for the senate. And it shall be the duty of the general assembly, at the same

session, to certify to the governor the principles or rules of representation which the respective houses may separately propose, to be applied in making reapportionments in the senate and in the house or delegates; and the governor shall, as soon thereafter as may be, by proclamation, make known the propositions of the respective houses, and require the voters of the commonwealth to assemble at such time as he shall appoint, at their lawful places of voting, and decide by their votes between the propositions thus presented. In the event the general assembly shall fail, in the year one thousand eight hundred and sixty-five, or in any tenth year thereafter, to make such reapportionment or certificate, the governor shall, immediately after the adjournment of the general assembly, by proclamation, require the voters of the commonwealth to assemble, at such time as he shall appoint, at their lawful places of voting, and to declare by their votes—

First, whether representation in the senate and house of delegates shall be apportioned on the "suffrage basis;" that is, according to the number of voters in the several counties, cities, towns, and senatorial districts of the commonwealth;

Or, second, whether representation in both houses shall be apportioned on the "mixed basis;" that is, according to the number of white inhabitants, contained, and the amount of all State taxes paid, in the several counties, cities, and towns of the commonwealth, deducting therefrom all taxes paid on licenses and law process, and any capitation tax on free negroes, allowing one delegate for every seventy-sixth part of said inhabitants, and one delegate for every seventy-sixth part of said taxes, and distributing the senators in like manner;

Or, third, whether representation shall be apportioned in the senate on taxation; that is, according to the amount of all State taxes paid in the several counties, cities, and towns of the commonwealth, deducting therefrom all taxes paid on licenses and law process, and any capitation-tax on free negroes, and in the house of delegates on the "suffrage basis" as aforesaid;

Or, fourth, whether representation shall be apportioned in the senate on the "mixed basis as aforesaid, and in the house of delegates on the "suffrage basis" as aforesaid; and each voter shall cast his vote in favor of one of said schemes of apportionment, and no more.

Sec. 6. It shall be the duty of the sheriffs and other officers taking said polls to keep the same open for the period of three days, and, within five days after they are closed, to certify true copies thereof to the governor, who shall, as early as may be, ascertain the result of said vote, and make proclamation thereof; and in case it is ascertained that a majority of all the votes cast is in favor of either of the principles of representation, referred as aforesaid to the choice of the voters, the governor shall communicate the result of such vote to the general assembly, at its first regular session thereafter; but in case it is ascertained that a majority of all the votes cast is not in favor of either of the principles of representation referred as aforesaid to the choice of the voters, it shall be the duty of the governor, as soon as may be after ascertaining that fact, in like manner to cause the voters to decide between the two principles of representation which shall, at such previous voting, have received the greatest number of votes; and he shall ascertain and make proclamation of the result of the said last vote, and communicate the same to the general assembly at its next regular session; and in either case, the general assembly, at the regular session thereof which shall be held next after the taking of the vote, the result of which shall

have been so communicated to it by the governor, shall reapportion representation in the two houses respectively in accordance with the principle of representation in each for which a majority of the votes cast were given; and it shall be the duty of the general assembly in every tenth year thereafter to reapportion and distribute the number of senators and delegates in accordance with the same principle.

QUALIFICATIONS OF SENATORS AND DELEGATES

Sec. 7. Any person may be elected senator who, at the time of election, has attained the age of twenty-five years, and is actually a resident within the district, and qualified to vote for members of the general assembly, according to this constitution. And any person may be elected a member of the house of delegates who, at the time of election, has attained the age of twenty-one years, and is actually a resident within the county, city, town, or election district, qualified to vote for members of the general assembly according to this constitution; but no person holding a lucrative office, no minister of the gospel or priest of any religious denomination, no salaried officer of any banking corporation or company, and no attorney for the commonwealth shall be capable of being elected a member of either house of assembly. The removal of any person elected to either branch of the general assembly from the county, city, town, or district for which he was elected shall vacate his office.

POWERS AND DUTIES OF THE GENERAL ASSEMBLY

Sec. 8. The general assembly shall meet once in every two years, and not oftener, unless convened by the governor in the manner prescribed in this constitution. No session of the general assembly, after the first under this constitution, shall continue longer than ninety days, without the concurrence of three-fifths of the members elected to each house; in which case the session may be extended for a further period, not exceeding thirty days. Neither house, during the session of the general assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members in such manner and under such penalties as each house may provide.

Sec. 9. The house of delegates shall choose its own speaker, and, in the absence of the lieutenant-governor, or when he shall exercise the office of governor, the senate shall choose from their own body a president pro tempore, and each house shall appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies; but if vacancies shall occur during the recess of the general assembly, such writs may be issued by the governor, under such regulations as may be prescribed by law. Each house shall judge of the election, qualification, and returns of its members, may punish them for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offence.

Sec. 10. The members of the assembly shall receive for their services a compensation, to be ascertained by law, and paid out of the public treasury; but no act increasing such compensation shall take effect until after the end of the term for which the members of the house of delegates voting thereon were elected. And no senator or delegate, during the term for which he shall have

been elected, shall be appointed to any civil office of profit under the commonwealth, which has been created, or the emoluments of which have been increased, during such term, except offices filled by elections by the people.

Sec. 11. Bills and resolutions may originate in either of the two houses of the general assembly, to be approved or rejected by the other, and may be amended by either house with the consent of the other.

Sec. 12. Each house of the general assembly shall keep a journal of its proceedings, which shall be published from time to time, and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal. No bill shall become a law until it has been read on three different days of the session in the house in which it originated, unless two-thirds of the members elected to that house shall otherwise determine.

Sec. 13. The whole number of members to which the State may at any time be entitled in the House of Representatives of the United States shall be apportioned as nearly as may be amongst the several counties, cities, and towns of the State, according to their respective numbers; which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

Sec. 14. In the apportionment the State shall be divided into districts, corresponding in number with the representatives to which it may be entitled in the House of Representatives of the Congress of the United States, which shall be formed respectively of contiguous counties, cities, and towns, be compact, and include, as nearly as may be, an equal number of the population, upon which is based representation in the House of Representatives of the United States..

Sec. 15. The privilege of the writ of habeas corpus shall not in any case be suspended. The general assembly shall not pass any bill of attainder; or any ex post facto law; or any law impairing the obligation of contracts; or any law whereby private property shall be taken for public uses without just compensation; or any law abridging the freedom of speech or of the press. 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 burdened 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 general assembly 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 commonwealth, 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.

Sec. 16. No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revived or amended by reference to its title, but the act revived or section amended shall be reenacted and published at length.

Sec. 17. The general assembly may provide that no person shall be capable of holding, or being elected to, any post of profit, trust, or emolument, civil or military, legislative, executive, or judicial, under the government of this commonwealth, who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance; but no person shall be so disqualified by reason of his having heretofore fought such duel, or sent or accepted such challenge, or been second in such duel, or bearer of such challenge or acceptance.

Sec. 18. The governor, lieutenant-governor, judges, and all others offending against the State, by maladministration, corruption, neglect of duty, or other high crime or misdemeanor, shall be impeachable by the house of delegates and be prosecuted before the senate, which shall have the sole power to try impeachments. When sitting for that purpose they 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 and enjoy any office of honor, trust, or profit under the commonwealth; but the party convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. The senate may sit during the recess of the general assembly for the trial of impeachments.

SLAVES AND FREE NEGROES

Sec. 19. Slaves hereafter emancipated shall forfeit their freedom by remaining in the commonwealth more than twelve months after they become actually free, and shall be reduced to slavery under such regulation as may be prescribed by law.

Sec. 20. The general assembly may impose such restrictions and conditions as they shall deem proper on the power of slave-owners to emancipate their slaves; and may pass laws for the relief of the commonwealth from the free negro population, by removal or otherwise.

Sec. 21. The general assembly shall not emancipate any slave, or the descendant of any slave, either before or after the birth of such descendant.

TAXATION AND FINANCE

Sec. 22. Taxation shall be equal and uniform throughout the commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law.

Sec. 23. Every slave who has attained the age of twelve years shall be assessed with a tax equal to and not exceeding that assessed on land of the value of three hundred dollars. Slaves under that age shall not be subject to taxation; and other taxable property may be exempted from taxation by the vote of a majority of the whole number of members elected to each house of the general assembly.

Sec. 24. A capitation-tax, equal to the tax assessed on land of the value of two hundred dollars, shall be levied on every white male inhabitant who has attained the age of twenty-one years; and one equal moiety of the capitation-tax upon white persons shall be applied to the purposes of education in primary and free schools; but nothing herein contained shall prevent exemptions of taxable polls in cases of bodily infirmity.

Sec. 25. The general assembly 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 license so taxed is issued.

Sec. 26. No money shall be drawn from the treasury but in pursuance of appropriations made by law; and a statement of the receipts, disbursements, appropriations, and loans shall be published after the adjournment of each session of the general assembly, with the acts and resolutions thereof.

Sec. 27. On the passage of every act which imposes, continues, or revives a tax, or creates a debt or charge, or makes, continues, or revives any appropriation of public or trust money or property, or releases, discharges, or commutes any claim or demand of the State, the vote shall be determined by yeas and nays, and the names of the persons voting for and against the same shall be entered on the journals of the respective houses, and a majority of all the members elected to each house shall be necessary to give it the force of a law.

Sec. 28. The liability to the State of any incorporated company or institution to redeem the principal and pay the interest of any loan heretofore made, or which may hereafter be made, by the State to such company or institution, shall not be released; and the general assembly shall not pledge the faith of the State, or bind it in any form, for the debts or obligations of any company or corporation.

Sec. 29. There shall be set apart annually, from the accruing revenues, a sum equal to 7 per cent, of the State debt existing on the first day of January, in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the sinking-fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking-fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by 1 per cent, the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the sinking-fund, and shall be applied in the manner before directed. The general assembly shall not otherwise appropriate any part of the sinking-fund or its accruing interest, except in time of war, insurrection, or invasion.

Sec. 30. The general assembly may, at any time, direct a sale of the stocks held by the commonwealth in internal improvement and other companies; but the proceeds of such sale, if

made before the payment of the public debt, shall constitute a part of the sinking-fund, and be applied in like manner.

Sec. 31. The general assembly shall not contract loans or cause to be issued certificates of debt or bonds of the State, irredeemable for a period greater than thirty-four years.

GENERAL PROVISIONS

Sec. 32. The general assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

Sec. 33. No lottery shall hereafter be authorized by law; and the buying, selling, or transferring of tickets or chances in any lottery, not now authorized by a law or this State, shall be prohibited.

Sec. 34. No new county shall be formed with an area less than six hundred square miles; nor shall the county or counties from which it is formed be reduced below that area; nor shall any county, having a white population less than five thousand, be deprived of more than one-fifth of such population; nor shall a county having a larger white population be reduced below four thousand. But any county, the length of which is three times its mean breadth, or which exceeds fifty miles in length, may be divided at the discretion of the general assembly. In all general elections the voters in any county, not entitled to separate representation, shall vote in the same election district.

Sec. 35. The general assembly shall confer on the courts the power to grant divorces, change the names of persons, and direct the sale of estates belonging to infants and other persons under legal disabilities, but shall not, by special legislation, grant relief in such cases, or in any other case of which the courts or other tribunals may have jurisdiction.

Sec. 36. The general assembly shall provide for the periodical registration in the several counties, cities, and towns, of the voters therein; and for the annual registration of the births, marriages, and deaths in the white population, and of the births and deaths in the colored population of the same, distinguishing between the numbers of the free colored persons and slaves.

Sec. 37. The general assembly, at intervals of five years from the dates of the returns of the census of the United States, shall cause to be taken a census and such statistics of this State as may be prescribed by law; which census and statistics shall be returned to the secretary of the commonwealth, who shall compare and correct the returns and report the same to the general assembly.

Sec. 38. The manner of conducting and making returns of elections, of determining contested elections, and of filling vacancies in office, in cases not specially provided for by this constitution, shall be prescribed by law; but special elections to fill vacancies in the office of judge in any court shall be for a full term. And the general assembly may declare the cases in which any office shall be deemed vacant, where no provision is made for that purpose in this constitution.

Article V

EXECUTIVE DEPARTMENT GOVERNOR

Section 1. The chief executive power of this commonwealth shall be vested in a governor. He shall hold the office for the term of four years, to commence on the first day of January next succeeding his election, and be ineligible to the same office for the term next succeeding that for which he was elected, and to any other office during his term of service.

Sec. 2. The governor shall be elected by the voters, at the times and places of choosing members of the general assembly. Returns of the elections shall be transmitted, under seal, by the proper officers, to the secretary of the commonwealth, who shall deliver them to the speaker of the house of delegates on the first day of the next session of the general assembly. The speaker of the house of delegates shall, within one week thereafter, in the presence of a majority of the senate and house of delegates, open the said returns, and the votes shall then be counted. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number, of votes, one of them shall be chosen governor by the joint vote of the two houses of the general assembly. Contested elections for governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

Sec. 3. No person shall be eligible to the office of governor unless he has attained the age of thirty years, is a native citizen of the United States, and has been a citizen of Virginia for five years next preceding his election.

Sec. 4. The governor shall reside at the seat of government; shall receive five thousand dollars for each year of his services, and while in office shall receive no other emolument from this or any other government.

Sec. 5. He shall take care that the laws be faithfully executed; communicate to the general assembly at every session the condition of the commonwealth; recommend to their consideration such measures as he may deem expedient; and convene the general assembly on application of a majority of the members of both houses thereof, or when in his opinion the interest of the commonwealth may require it. He shall be commander-in-chief of the land and naval forces of the State; have power to embody the militia to repel invasion, suppress insurrection, and enforce the execution of the laws; conduct, either in person or in such other manner as shall be prescribed by law, all intercourse with other and foreign states; and, during the "recess of the general assembly, fill, pro tempore, all vacancies in those offices for which the constitution and laws make no provision; but his appointments to such vacancies shall be by commissions to expire at the end of thirty days after the commencement of the next session of the general assembly. He shall have power to remit fines and penalties in such cases and under such rules and regulations as may be prescribed by law; and, except when the prosecution has been carried on by the house of delegates, or the law shall otherwise particularly direct, to grant reprieves and pardons after conviction, and to commute capital punishment; but he shall communicate to the general assembly, at each session, the particulars of every case of fine or penalty remitted, of reprieve or

pardon granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same.

Sec. 6. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices; and may also require the opinion in writing of the attorney-general upon any question of law connected with his official duties.

Sec. 7. Commissions and grants shall run in the name of the commonwealth of Virginia, and be attested by the governor, with the seal of the commonwealth annexed.

LIEUTENANT-GOVERNOR

Sec. 8. A lieutenant-governor shall be elected at the same time, and for the same term as the governor, and his qualification and the manner of his election in all respects shall be the same.

Sec. 9. In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant-governor, and the general assembly shall provide by law for the discharge of the executive functions in other necessary cases.

Sec. 10. The lieutenant-governor shall be president of the senate, but shall have no vote, and while acting as such shall receive a compensation equal to that allowed to the speaker of the house of delegates.

SECRETARY OF THE COMMONWEALTH, TREASURER, AND AUDITOR

Sec. 11. A secretary of the commonwealth, treasurer, and an auditor of public accounts shall be elected by the joint vote of the two houses of the general assembly, and continue in office for the term of two years, unless sooner removed.

Sec. 12. The secretary shall keep a record of the official acts of the governor, which shall be signed by the governor and attested by the secretary; and when required, he shall lay the same, and any papers, minutes, and vouchers pertaining to his office, before either house of the general assembly, and shall perform such other duties as may be prescribed by law.

Sec. 13. The powers and duties of the treasurer and auditor shall be such as now are or may be hereafter prescribed by law.

BOARD OF PUBLIC WORKS

Sec. 14. There shall be a board of public works, to consist of three commissioners. The State shall be divided into three districts, containing as nearly as may be equal numbers of voters, and the voters of each district shall elect one commissioner, whose term of office shall be six years;

but of those first elected, one, to be designated by lot, shall remain in office for two years only, and one other, to be designated in like manner, shall remain in office for four years only.

Sec. 15. The general assembly, at its first session after the adoption of this constitution, shall provide for the election and compensation of the commissioners, and the organization of the board. The commissioners first elected shall assemble on a day to be appointed by law, and decide by lot the order in which their terms of service shall expire.

Sec. 16. The board of public works shall appoint all officers employed on the public works, and all persons representing the interest of the commonwealth in works of internal improvement, and shall perform such other duties as may be prescribed by law.

Sec. 17. The members of the board of public works may be removed by the concurrent vote of a majority of all the members elected to each house of the general assembly; but the cause of removal shall be entered on the journal of each house.

Sec. 18. The general assembly shall have power, by a vote of three- fifths of the members elected to each house, to abolish said board whenever in their opinion a board of public works shall no longer be necessary.

MILITIA

Sec. 19. The manner of appointing militia officers shall be prescribed by law.

Article VI

JUDICIARY DEPARTMENT

Section 1. There shall be a supreme court of appeals, district courts, and circuit courts. The jurisdiction of these tribunals and of the judges thereof, except so far as the same is conferred by this constitution, shall be regulated by law.

JUDICIAL DIVISIONS

Sec. 2. The State shall be divided into twenty-one judicial circuits, ten districts, and five sections.

I. The counties of Princess Anne, Norfolk, Nansemond, Isle of Wight, Southampton, Greensville, Surry, and Sussex, and the city of Norfolk shall constitute the first circuit.

II. The counties of Prince George, Dinwiddie, Brunswick, Mecklenburg. Lunenburg, Nottoway, Amelia, Chesterfield, and Powhatan, and the city of Petersburg shall constitute the second circuit.

III. The counties of Cumberland, Buckingham. Appomattox, Campbell, Prince Edward, Charlotte, and Halifax, and the town of Lynchburg shall constitute the third circuit.

IV. The counties of Pittsylvania, Bedford, Franklin, Patrick, and Henry shall constitute the fourth circuit.

V. The counties of Accomack and Northampton shall constitute the fifth circuit.

VI. The counties of Elizabeth City, Warwick, York, Gloucester, Matthews, Middlesex, Henrico. New Kent, Charles City, and James City, and the city of Williamsburg shall constitute the sixth circuit.

VII. The city of Richmond shall be the seventh circuit.

VIII. The counties of Lancaster. Northumberland. Richmond, Westmoreland, King George, Spottsylvania, Caroline, Hanover, King William, King and Queen, and Essex shall constitute the eighth circuit.

IX. The counties of Stafford, Prince William, Alexandria, Fairfax, Loudoun, Fauquier, and Rappahannock shall constitute the ninth circuit.

X. The counties of Culpepper, Madison, Greene, Orange, Albemarle, Louisa, Fluvanna, and Goochland shall constitute the tenth circuit.

XI. The counties of Nelson, Amherst, Rockbridge, Augusta, and Bath shall constitute the eleventh circuit.

XII. The counties of Pendleton, Highland, Rockingham, Page, Shenandoah, Warren, and Hardy shall constitute the twelfth circuit.

XIII. The counties of Clarke, Frederick, Hampshire, Morgan, Berkeley, and Jefferson shall constitute the thirteenth circuit.

XIV. The counties of Monroe, Greenbrier, Pocahontas, Alleghany, Botetourt, Roanoke, and Craig shall constitute the fourteenth circuit.

XV. The counties of Giles, Mercer, Raleigh, Wyoming. Logan, Boone, Fayette, and Nicholas shall constitute the fifteenth circuit.

XVI. The counties of Grayson, Carroll, Wythe, Floyd, Pulaski, and Montgomery shall constitute the sixteenth circuit.

XVII. The counties of Smyth, Tazewell, Washington, Russell, Scott, and Lee shall constitute the seventeenth circuit.

XVIII. The counties of Wayne. Cabell, Mason. Jackson, Putnam, and Kanawha shall constitute the eighteenth circuit.

XIX. The counties of Wood, Wirt, Gilmer, Braxton, Lewis, Ritchie, Doddridge, and Pleasants shall constitute the nineteenth circuit.

XX. The counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, and Monongalia shall constitute the twentieth circuit.

XXI. And the counties of Harrison, Marion, Taylor, Preston, Barbour, Randolph, and Upshur shall constitute the twenty-first circuit.

Sec. 3. The first and second circuits shall constitute the first district; the third and fourth circuits the second district; the fifth, sixth, and seventh circuits the third district; the eighth and ninth circuits the fourth district; the tenth and eleventh circuits the fifth district; the twelfth and thirteenth circuits the sixth district; the fourteenth and fifteenth circuits the seventh district; the sixteenth and seventeenth circuits the eighth district; the eighteenth and nineteenth circuits the ninth district; and the twentieth and twenty-first circuits the tenth district.

Sec. 4. The first and second districts shall constitute the first section; the third and fourth districts the second section; the fifth and sixth districts the third section; the seventh and eighth districts the fourth section; and the ninth and tenth districts the fifth section.

Sec. 5. The general assembly may, at the end of eight years after the adoption of this constitution, and thereafter at intervals of eight years, rearrange the said circuits, districts, and sections, and place any number of circuits in a district, and of districts in a section: but each circuit shall be altogether in one district, and each district in one section; and there shall not be less than two districts and four circuits in a section, and the number of sections shall not be increased or diminished.

CIRCUIT COURTS

Sec. 6. For each circuit a judge shall be elected by the voters thereof, who shall hold his office for the term of eight years, unless sooner removed in the manner prescribed by this constitution. He shall at the time of his election be at least thirty years of age, and during his continuance in office shall reside in the circuit of which he is judge.

Sec. 7. A circuit court shall be held at least twice a year by the judge of each circuit in every county and corporation thereof, wherein a circuit court is now or may hereafter be established. But the judges in the same district 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.

DISTRICT COURTS

Sec. 8. A district court shall be held at least once a year in every district, by the judges of the circuits constituting the section and the judge of the supreme court of appeals for the section of which the district forms a part, any three of whom may hold a court; but no judge shall sit or decide upon any appeal taken from his own decision. The judge of the supreme court of appeals of one section may sit in the district courts of another section, when required or authorized by law to do so.

Sec. 9. The district court shall not have original jurisdiction, except in cases of habeas corpus, mandamus, and prohibition.

COURT OF APPEALS

Sec. 10. For each section a judge shall be elected by the voters thereof, who shall hold his office for the term of twelve years, unless sooner removed in the manner prescribed by this constitution. He shall at the time of his election be at least thirty-five years of age, and during his continuance in office reside in the section for which he is elected.

Sec. 11. The supreme court of appeals shall consist of the five judges so elected, any three of whom may hold a court. It shall have appellate jurisdiction only, except in cases of habeas corpus, mandamus, and prohibition. It shall not have jurisdiction in civil causes where the matter in controversy, exclusive of costs, is less in value or amount than five hundred dollars, except in controversies concerning the title or boundaries of land, the probate of a will, 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 of a county to levy tolls or taxes; and

except in cases of habeas corpus, mandamus, and prohibition, and cases involving freedom, or the constitutionality of a law.

Sec. 12. Special courts of appeals, to consist of not less than three nor more than five judges, may be formed of the judges of the supreme court of appeals and of the circuit courts, or any of them, to try any cases remaining on the dockets of the present court of appeals when the judges thereof cease to hold their offices; or to try any cases which may be on the dockets of the supreme court of appeals established by this constitution, in respect to which a majority of the judges of said court may be so situated as to make it improper for them to sit on the hearing thereof.

Sec. 13. When a judgment or decree is reversed or affirmed by the supreme court of appeals, the reasons therefore shall be stated in writing, and preserved with the record of the case.

GENERAL PROVISIONS

Sec. 14. Judges shall be commissioned by the governor, and shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office. The salary of a judge of the supreme court of appeals shall not be less than three thousand dollars, and that of a judge of a circuit court not less than two thousand dollars per annum, except that of the judge of the fifth circuit, which shall not be less than fifteen hundred dollars per annum; and each shall receive a reasonable allowance for necessary travel.

Sec. 15. No judge, during his term of service, shall hold any other office, appointment, or public trust, and the acceptance thereof shall vacate his judicial office; nor shall he, during such term, or within one year thereafter, be eligible to any political office.

Sec. 16. No election of judge shall be held within thirty days of the time of holding any election of electors of President and Vice- President of the United States, of members of Congress or of the general assembly.

Sec. 17. Judges may be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the members elected to each house must concur in such vote; and the cause of removal shall be entered on the journal of each house. The judge against whom the general assembly 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 house of the general assembly shall act thereupon.

Sec. 18. The officers of the supreme court of appeals and of the district courts shall be appointed by the said courts respectively, or by the judges thereof in vacation. Their duties, compensation, and tenure of office shall be prescribed by law.

Sec. 19. The voters of each county or corporation in which a circuit court is held shall elect a clerk of such court, whose term of office shall be six years. The attorney for the commonwealth, elected for a county or corporation wherein a circuit court is directed to be held, shall be attorney for the commonwealth for that court; but in case a circuit court is held for a city, or for a county and a city, there shall be an attorney for the commonwealth for such, to be elected by the voters

of such city or county and city, and to continue in office for the term of four years. The duties and compensation of these officers, and the mode of removing them from office, shall be prescribed by law.

Sec. 20. When a vacancy shall occur in the office of clerk of any court, such court may appoint a clerk pro tempore, who shall discharge the duties of the office until the vacancy is filled.

Sec. 21. The general assembly shall provide for the compensation of jurors, but appropriations for that purpose shall not be made from the State treasury, except in prosecutions for felony and misdemeanor.

Sec. 22. At every election of a governor, an attorney-general shall be elected by the voters of the commonwealth for the term of four years. 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 manner prescribed for the removal of judges.

Sec. 23. Judges and all other officers, whether elected or appointed, shall continue to discharge the duties of their respective offices after their terms of service have expired, until their successors are qualified.

Sec. 24. Writs shall run in the name of the commonwealth of Virginia, and be attested by the clerks of the several courts. Indictments shall conclude, " against the peace and dignity of the commonwealth."

COUNTY COURTS

Sec. 25. There shall be in each county of the commonwealth a county court, which shall be held monthly, by not less than three nor more than five justices, except when the law shall require the presence of a greater number.

Sec. 26. The jurisdiction of the said courts shall be the same as that of the existing county courts, except so far as it is modified by this constitution, or may be changed by law.

Sec. 27. Each county shall be laid off into districts, as nearly equal as may be in territory and population. In each district there shall be elected, by the voters thereof, four justices of the peace, who shall be commissioned by the governor, reside in their respective districts, and hold their offices for the term of four years. The justices so elected shall choose one of their own body, who shall be the presiding justice of the county court, and whose duty it shall be to attend each term of said court. The other justices shall be classified by law for the performance of their duties in court.

Sec. 28. The justices shall receive for their services in court a per- diem compensation, to be ascertained by law, and paid out of the county treasury; and shall not receive any fee or emolument for other judicial services.

Sec. 29. The power and jurisdiction of justices of the peace within their respective counties shall be prescribed by law.

COUNTY OFFICERS

Sec. 30. The voters of each county shall elect a clerk of the county court, a surveyor, an attorney for the commonwealth, a sheriff, and so many commissioners of the revenue as may be authorized by law, who shall hold their respective offices as follows: The clerk and the surveyor for the term of six years; the attorney for the term of four years; the sheriff and the commissioners for the term of two years. Constables and overseers of the poor shall be elected by the voters, as may be prescribed by law.

Sec. 31. The officers mentioned in the preceding section, except the attorneys, shall reside in the counties or districts for which they were respectively elected. No person elected for two successive terms to the office of sheriff shall be reeligible to the same office for the next succeeding term: nor shall he, during his term of service, or within one year thereafter, be eligible to any political office.

Sec. 32. The justices of the peace, sheriffs, attorneys for the commonwealth, clerks of the circuit and county courts, and all other county officers, shall be subject to indictment for malfeasance, misfeasance, or neglect of official duty; and, upon conviction thereof, their offices shall become vacant.

CORPORATION COURTS AND OFFICERS

Sec. 33. The general assembly may vest such jurisdiction as shall be deemed necessary in corporation courts, and in the magistrates who may belong to the corporate body.

Sec. 34. All officers appertaining to the cities and other municipal corporations shall be elected by the qualified voters, or appointed by the constituted authorities of such cities or corporations, as may be prescribed by law.

Done in convention, in the city of Richmond, on the first day of August, in the year of our Lord one thousand eight hundred and fifty-one, and in the seventy-sixth year of the commonwealth of Virginia.

John Y. Mason, President.

S. D. Whittle, Secretary.

SCHEDULE

Section 1. It shall be the duty of the president of this convention, immediately on its adjournment, to certify to the governor a copy of the bill of rights and constitution adopted, together with this schedule.

Sec. 2. Upon the receipt of such certified copy, the governor shall forthwith announce the fact by proclamation, to be published in such newspapers of the State as may be deemed requisite for general information; and shall annex to his proclamation a copy of the bill of rights and constitution, together with this schedule; which proclamation, bill of rights, constitution, and schedule shall be published in the manner indicated, for the period of one month; and ten printed copies thereof shall, by the secretary of the commonwealth, be immediately transmitted by mail to the clerk of each county and corporation court in this commonwealth, to be by such clerk submitted to the examination of any person desiring the same.

Sec. 3. The officers authorized by existing laws to conduct general elections shall, at the places appointed for holding the same, open a poll-book on the fourth Thursday in October next, to be headed "The constitution as amended and schedule," and to contain two separate columns; the first column to be headed "For ratifying:" the other to be headed "For rejecting." And such officers keeping said polls open for the space of three days, shall then and there receive and record in said poll-book the votes for and against this constitution and schedule, of all persons qualified under the existing or amended constitution, to exercise the right of suffrage.

Sec. 4. The taking of the polls, the duties to be performed by the officers, the privilege of the voters, and the penalties attaching for misconduct on the part of any person, shall be in all things as prescribed by the second, third, fourth, seventh, eighth, and ninth sections of the act of the general assembly passed March the fourth, one thousand eight hundred and fifty, entitled "An act to take the sense of the people upon the call of a convention, and providing for organizing the same," so far as the provisions of the said sections may be applicable.

Sec. 5. It shall be the duty of the governor, upon receiving the returns of said officers, to ascertain the result thereof, and forthwith to declare the same by his proclamation, stating the aggregate vote in the State for and against the ratification of the amended constitution and schedule, which shall be published at least once a week until the second Monday in December next, in such newspapers as, in his opinion, will be best calculated to diffuse general information thereof; and if it appear that a majority of the votes cast is in favor of ratification, the governor, at the same time, and in like manner, shall make proclamation for holding, on the day last mentioned, a general election throughout the State for delegates and senators to the general assembly, according to the apportionment and districts prescribed in this constitution; and also for the election of a governor, lieutenant-governor, and attorney-general.

Sec. 6. The officers authorized by existing laws to hold and conduct general elections, shall hold and conduct the elections herein required; and such officers and all other persons shall be governed and controlled therein by the provisions of said laws, so far as the same may be applicable to and necessary for the proper conducting of the said elections. Duplicate polls shall be separately kept for governor and lieutenant-governor, for attorney-general, and for senators and delegates to the general assembly, which shall be verified by the oaths of the officers conducting the elections.

Sec. 7. The verified duplicate polls for governor, lieutenant-governor, and attorney-general shall be deposited with the clerks of the several counties and cities, who shall retain one in their respective offices, and transmit the other by mail to the secretary of the commonwealth.

Sec. 8. In the election of senators and delegates for districts formed of more than one county and city, the officers conducting the same at the court-house of the several counties and cities forming each district shall assemble, on the eighth day after the commencement of the said election, at the court-house of the county or city first named as one of the counties of the district; shall compare the polls and ascertain the result, and shall deliver and return certificates of election according to the laws now in force.

Sec. 9. The members of the general assembly so elected shall meet at the capitol in the city of Richmond on the second Monday in January, in the year one thousand eight hundred and fifty-two, and then and there organize as the general assembly of Virginia; but before such organization, they shall respectively take the oath of fidelity to the commonwealth, and the other oaths of office required by the laws now in force.

Sec. 10. The election of members of the general assembly under this constitution shall vacate the seats of those elected under the present constitution.

Sec. 11. The official terms of the delegates first elected to the general assembly under this constitution shall expire on the thirtieth day of June, in the year one thousand eight hundred and fifty-three.

Sec. 12. The official terms of the first governor, lieutenant-governor, and attorney-general elected under this constitution shall expire on the thirty-first day of December, in the year one thousand eight hundred and fifty-five.

Sec. 13. The present judges of the supreme court of appeals and of the circuit courts, and their successors, who may be appointed under the existing constitution, shall remain in office until such time as the law may prescribe for the commencement of the official terms of the judges under the amended constitution, and no longer; which time shall not be more than six months after the termination of the first session of the general assembly under the amended constitution.

Sec. 14. The executive department of the government shall remain as at present organized; and the governor and councillors of state and their successors appointed under the existing constitution shall continue in office until a governor elected under this constitution shall be qualified: and all other persons in office when this constitution is adopted, except as is herein otherwise expressly directed, shall continue in office until their successors are qualified; and vacancies in office, happening before such qualification, shall be filled in the manner now prescribed by law.

Sec. 15. All the courts of justice now existing shall continue with their present jurisdiction until and except so far as the judicial system may or shall be otherwise organized; and all laws in force when this constitution is adopted, and not inconsistent therewith, and all rights, prosecutions, actions, claims, and contracts shall remain and continue as if this constitution was not adopted.

Sec. 16. The general assembly shall pass all laws necessary for carrying this constitution into full effect and operation.

Done in convention, in the city of Richmond, on the first day of August, in the year of our Lord one thousand eight hundred and fifty-one, and in the seventy-sixth year of the commonwealth of Virginia.

John V. Mason, President.

S. D. Whittle, Secretary.

WEST VIRGINIA DIVISION OF CULTURE AND HISTORY

WV
A&H

West Virginia Archives & History



A State of Convenience

THE CREATION of WEST VIRGINIA

An On-Line Exhibit
West Virginia Archives and History

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, judgment 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 disrespectful 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 Raleigh, 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 controversy, 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 ofin 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 bylaw, 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 nonpayment 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 nonpayment 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.)*

***This section 7 was deleted and a substitute provided by the Willey Amendment. See Vol. III, pp. 473, 474, 528.**

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 Appeals 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 proposed 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 appointed, 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.

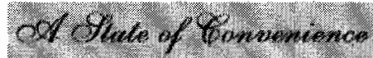
13. The Legislature elected under this Schedule shall meet at the Seat of Government on the twenty-first day after their election.

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.

Chapter Eleven: Constitutional Convention



West Virginia Archives and History

West Virginia Division of Culture and History
Copyright 2010. All Rights Reserved.
Privacy Notice

WEST VIRGINIA DIVISION OF CULTURE AND HISTORY

WV
A&H

West Virginia Archives & History



A State of Convenience

THE CREATION of WEST VIRGINIA

An On-Line Exhibit
West Virginia Archives and History

Debates and Proceedings of the First Constitutional Convention of West Virginia

December 5, 1861

Prayer by Rev. James J. Brownson of Presbyterian Church, Washington, Pa.

Journal read and approved.

MR. VAN WINKLE. I have a proposition, sir, that I wish to submit to the tender consideration of the Judiciary Committee. It need not be read, sir; just refer it under the rule.

It was as follows:

"RESOLVED, That the Judiciary Committee inquire into the propriety of providing that every justice of the peace shall have jurisdiction of actions of debt, detinue and trover, when the value in controversy does not exceed one hundred dollars, and of actions on the case, except for defamation, when the damages laid do not exceed that sum, and the defendant resides, or not being a resident of the State is found in the district for which the justice was elected; and of misdemeanors and breaches of the peace occurring therein and punishable by a fine not exceeding five dollars or imprisonment in the county jail for not exceeding thirty days. And also of entitling either party to a civil suit, when the value in controversy or the damages laid exceed twenty dollars, and the defendant in a criminal proceeding when the penalty is imprisonment, to a trial by six duly qualified jurors, with an appeal to the circuit court in all cases which may be tried by jury, and when the value in controversy or the damages proved in a civil case exceeds ten dollars. Each justice to be a conservator of the peace for his county and authorized to take acknowledgments of deeds, &c., and to administer oaths and to discharge all other duties appertaining to his office, except the trial of causes as above, in any part thereof, and to reside or keep an office within his district."

MR. DERING. I have a resolution, I wish to have referred to the same committee:

"RESOLVED, That the Committee on County Organization, take into consideration the propriety of making the high sheriff and his deputies, ineligible after serving one term."

MR. CALDWELL. The Committee on the Executive Department, sir, have instructed me to make a report which I ask to be laid on the table and printed. And I am instructed by the minority of that committee to report a substitute for section nine, and ask that the same disposition be made of it.

The following is the report:

EXECUTIVE DEPARTMENT

"1. The chief executive power of this Commonwealth shall be vested in a Governor, who shall be elected by the voters qualified to vote for members of the general assembly, and at the time and place to be prescribed by law. He shall hold his office for the term of four years, to commence on such a day as may be designated by the general assembly, and shall be ineligible to that office for four years next succeeding his election, but shall not be eligible for more than eight years, nor to any other office during his term of service.

2. No person shall be eligible to the office of governor, unless he has attained the age of thirty years, is a native citizen of the United States, and has been a citizen of any county, city or town, forming a part of this State, for five years next preceding his election.

3. The governor shall reside at the seat of government, shall receive three thousand dollars for each year of his services, and during his continuance in office, shall receive no other emolument from this State or any other government.

4. The governor shall be commander-in-chief of the military forces of the State, shall have the power to call out the Militia, to repel invasion, to suppress insurrection, and enforce the execution of the laws; 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 general assembly, shall fill, pro tempore, all vacancies in those offices for which the Constitution and the laws make no provisions; but appointment to such vacancies shall be by commissions to expire at the end of thirty days after the commencement of the succeeding session of the general assembly. He shall take care that the laws be faithfully executed; communicate to the general assembly at each session thereof the condition of the Commonwealth; recommend to the consideration of the members such measure as he may deem expedient, and convene the general assembly in extra session when in his opinion the interests of the Commonwealth may require it. He shall have power to remit fines and penalties in such cases and under such regulation as may be prescribed by law; to commute capital punishments; and, except when the prosecution has been carried on by the house of delegates, to grant reprieves and pardons after the conviction; but he shall communicate to the general assembly, 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.

5. The governor may require information in writing from the officers in executive departments upon any subject relating to the duties of their respective offices, and also the opinion in writing of the attorney general upon any question of law, pertaining to the business of the executive department.

6. Returns of the elections of governor shall be made in such manner and by such persons as shall be prescribed by the general assembly, to the secretary of the Commonwealth, who shall deliver them to the speaker of the house of delegates, on the first day thereafter of the organization of the general assembly.

The speaker of the house of delegates shall within ten days hereafter in the presence of a majority of the senate and the house of delegates, open the said returns, and the votes shall then be counted. The person having the highest number of votes if qualified according to the second section of this article, shall be declared elected, but if two or more shall have the highest and an equal number of votes, one of them shall thereupon be chosen governor by the joint vote of the two houses of the general assembly. Contested elections for Governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

7. A lieutenant-governor shall be elected at the same time, and for the same term as the governor, and his qualification and the manner of his election in all respects shall be the same.

8. In case of the removal of the governor from office, or of his death, failure to qualify within the time that shall be 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, power and authority, shall devolve upon the lieutenant-governor, and the general assembly shall provide by law for the discharge of the executive functions in all other necessary cases.

9. A secretary of the Commonwealth, treasurer and an auditor of public accounts shall be elected at the same time and for the same term as the governor, their qualification and the manner of their election in all respects shall be the same, and their compensation and duties shall be prescribed by the general assembly.

10. The general assembly shall have power to establish a land office, whenever it shall be deemed expedient, assign the duties thereof to a proper officer, and prescribe his compensation, term of, and manner of appointment to office.

11. The general assembly shall have authority 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.

12. The manner of appointing militia officers, the enrollment of the militia, and how it shall be called forth for actual service or drill shall be prescribed by law, but no officer below the rank of brigadier general, shall be appointed by the general

assembly.

13. Commissions and grants shall run in the name of the Commonwealth of West Virginia, and bear tests by the governor, with the seal of the Commonwealth annexed."

By order of the committee.

E. H. CALDWELL, Chairman.

The following is the substitute.

"9. A secretary of the Commonwealth, treasurer and an auditor of public accounts, shall be elected by the joint vote of the two houses of the general assembly, and continue in office for the term of four years, unless sooner removed. The secretary shall keep a record of the official acts of the governor, which shall be signed by the governor and attested by the secretary, and when required, he shall lay the same, and any papers, minutes and vouchers, pertaining to his office, before either house of the general assembly, and shall perform such other duties as may be prescribed by law.

The powers and duties of the treasurer and auditor shall be such as may be prescribed by the general assembly of the Commonwealth, and their compensation, as well as that of the secretary of the Commonwealth, shall be fixed by law.

LEWIS RUFFNER,
E. H. CALDWELL."

MR. VAN WINKLE. Is there anything before the Convention? If it is necessary for a motion I move that the report of the Committee on Fundamental and General Provisions be taken up and proceeded in.

THE PRESIDENT. The seventh section would be first in order.

The section was reported as follows:

"Sec. 7. In all State, county and municipal elections the mode of voting shall be by viva voce."

MR. POMEROY. I move to amend the seventh section by striking out all after the first two words and insert the following: "elections by the people, the mode of voting shall be by ballot."

MR. SINSEL. It seems to me the Constitution of the United States provides for a different mode of electing electors, and I think that amendment would conflict with the Constitution.

MR. BROWN of Preston. I rise to inquire whether the mode of voting prescribed in the section as it is reported would prevent a dumb person who is entitled to the right of suffrage from voting: I make this inquiry of the chairman of the committee, I am not properly advised as to the force of the section. If that would be the effect, sir, I think there should be an amendment in that particular, which I will propose at the proper time.

MR. VAN WINKLE. There is such a clause in the present Constitution where the voting is viva voce; but it goes on to provide that dumb persons "may vote by ballot; and it seems to me nothing can be more superfluous. If a dumb person votes with an open ticket, with his name written on, that is his mode of speaking; and certainly that is a viva voce vote to all intents and purposes. I would advise the gentleman, however, to retain his motion if he chooses to make it till this main question is disposed of.

MR. POMEROY. Though I have offered this substitute I do not deem it necessary to inflict a speech on this body, as our time is precious; and if the friends of that mode of voting will give it a quiet support and not discuss this matter, I will make no remarks in favor of this plan of voting, but leave it to the body, as they have discussed it freely outside the house, to take the vote on it and proceed to another section.

MR. STUART of Doddridge. I do not, sir, think we have anything to lose by a comparison of opinion on this question or any other. I have not the least hesitancy in giving my views on any question that may arise in our Constitution. I am in favor, Mr. President, of the section as it is, although I am not very tenacious about it. I hope the gentleman from Wood will not accuse me of "hankering" after the "flesh-pots" simply because I think the old mode of voting is better than the new mode proposed. In all my experience, Mr. President, I have never seen any good result from voting by ballot. I have been in various States that vote by ballot and I have never yet seen an election held there, with any party vote, that it was not known how men voted. They will use means for the purpose of evading it. I presume it is well known to every member of this Convention that they will get up their tickets in such form. One party will have their blue tickets, the other white or red, or long and short; and I have never yet seen a gentleman cast a vote in our neighboring States that it was not distinctly known how he voted.

I like this independent way of voting - coming up and declaring how we vote. It seems to me it inculcates principles of

independence. One illustration is sufficient to satisfy my mind that the section as it now stands is the best. I can only refer gentlemen to our vote last spring. Suppose, sir, we had cast our vote last May, on the ordinance of secession, by ballot; we never would have known who amongst us desired to break down and destroy our government. We could not point them out if it had not been for our mode of voting. Now such another occurrence may never arise, but as I can conceive of no advantage to be derived from this ballot voting, I see no necessity for adopting it; and such another contingency might arise, and then we will be posted and prepared for it. We will know who the enemies of our country are, and who are not. This is a sufficient reason to induce me to vote against the amendment of the gentleman from Hancock.

MR. BROOKS. I have been instructed by my constituents to give my influence to change the system of voting; and while I have no particular objections to offer to the system myself as an individual, yet I feel disposed to do my duty to my constituents; and as experience has been adverted to I suppose it would be nothing amiss for me to give my experience. When I say I have no objections as an individual to the system of viva voce voting, I mean I am willing that everybody should know how I vote and whom and what I vote for. But I know that there is not quite that amount of independence in our country that there should be. I know that every man in our land often has not the fortitude to go under all the circumstances and declare freely and declare calmly his choice of delegates to any legislative department, or officers to fill any department in our government whatever. And while there has been an isolated case in which some advantage might accrue by a proper knowledge of how men vote, there have been numerous cases in which disadvantages have accrued.

I believe the design of voting is to get an expression of our citizens touching their preference in public offices; and I believe that expression should be as much as possible untrammelled and free and independent. And while some men are prepared to give such a vote under any circumstances, others are not. And here I would mention a case or two that I have witnessed myself, that seem to me to declare that our old custom of voting is not the best to get a clear expression of the view or wishes of individuals or our people, touching their representatives or rulers.

It is very frequently the case in the relations of life that a number of individuals are dependent upon one individual; and being dependent upon that individual, that individual becomes a candidate for office; and for the want of that independence that men should possess, those individuals are influenced by their relations to vote men into office that really are not their choice and sometimes would be the last in their choice if they had independence enough to express their preferences, their wishes and desires touching their rulers. For instance, in the history of my travels I have been in one of our back western counties. A few men, perhaps as many as three, were candidates for the legislature. In those counties merchants did a large credit business. One man had the names of a great many voters of that county on his ledger, some of them considerably in debt. As he passed around he made it known amongst those individuals that if any of his debtors should vote against him a suit in law should be the result, and that he would collect in the most hasty process possible. The result was that numbers of them, who expressed themselves to my own knowledge that he was not their choice, but simply from fear of cost and trouble by hasty collections of debt, voted for him, and that man was elected.

Well, now, that threat did intend something I have knowledge of. There was one man of the number to my knowledge, who had fortitude enough under the threat to go to the polls and declare his independent choice; and before ten days had expired a writ was served for debt on that man. I do not go further back than a few weeks or months for other examples. I have been amongst men at the polls and hearing men vote. I remember hearing it remarked, by an individual, such a candidate looked such a one out of his vote today. I then noticed that that candidate named had taken a position near the table where the votes were recorded and would look in the face of every voter as he came -up; and before the sun had gone down more than one, two or three individuals came to me and told me, I would not have voted for that man but the relation I sustain to him makes it my best policy to do so from the fact that he was there ready to see who voted against him and who for him.

Now I presume if the plan of voting had been for the individual voting to have prepared his ticket, advanced to the ballot box, had his name recorded and his ticket dropped in, that candidate would not have known who voted for and who against him, and thence a different result would have been produced.

With this view of facts, my impression is, sir, that it will, to say the least of it, be as fair if not a fairer way of obtaining a fair and independent expression of men's wishes touching their rulers or legislators, as the present mode of voting. Hence, as instructed, I shall doubtless give my vote for the ballot box. I have seen some elections go off - and been a little more successful than my friend from Doddridge - for I have seen elections by ballot when I could not tell, nor any other individual could tell I conversed with, who voted for this man or that man, and yet there was a man elected. (Laughter) Hence, it is not always ascertained whether men vote for A, B, or C, when they cast their votes at the ballot box.

I am in favor of the ballot box.

MR. PARKER. I agree with the gentleman from Upshur. Whatever may have been our difference of opinion in relation to any condition to the right of voting - whether some of us thought the payment of taxes should be a condition of voting or the contrary - I trust we are agreed that when that party comes to the ballot box that he votes freely whether high or humble. The only question arising seems to be which of the two modes here proposed will be most likely to secure the greatest degree of freedom in voting. Now, I admit, Mr. President, if all the legal voters in our new State could be practically equal in all their surroundings, standing as compeers in all respects, I would go for viva voce voting. That would meet our case then. I should go for it. There is a good deal in it to recommend it, among equals; but, in the nature of things that equality can never exist. It has never existed in any community. It cannot exist. It is impracticable. Then the question is, with all these inequalities and differences in circumstances, which is best? I have had some experience in some of the northern States where capital is aggregated and manufacturing is carried on by large aggregated capital and in those

States - in the city of Lowell for instance, where some fifteen thousand operatives are dependent for the support of themselves and families on their employment by these companies; I have seen it - it would be by ballot, open ballot, but never by viva voce - the espionage and dictation was carried to that extent that the agent or overseer would come and stand at the ballot box; and that influence was carried to that extent that the legislature took it in hand in Massachusetts, and made it secret ballot - every man's ballot to be enclosed in an envelope and that envelope sealed - should not carry it open, but it should be in an envelope and that envelope sealed up. Well, in that way they obviated it. If there were two ballots in an envelope, they threw them both out. Well, that cured this difficulty - that, I know.

If every man in our new State owned his farm and was about equal, we could get along very well viva voce. We are making a Constitution that is to reach forward; and let us look for a few minutes at the resources and nature of our new State. We all agree that its great controlling interest that is to give it prominence is manufacturing and mining. Well, now, throughout the country we find that manufacturing and mining, almost all, is carried on by associated capital. The operatives depend for their daily subsistence and that of their families upon what they get from these associated companies of capitalists. That is the state of things that is to take place ahead in our new State. Well, now assuming that these great interests are to be perhaps (and certainly, as I think) the predominant interest of the State, why to leave it viva voce as I have seen it over there in the North it seems to me would be a mere farce. It would be worse than giving whiskey and money to get votes. For that reason, Mr. President, I shall feel it my imperative duty to go for the amendment.

MR. POMEROY. It was with a view of saying something on this question that I offered this substitute. We are here, as has been said on another question, as the people; we are the representatives of the people; We are here to carry out their wishes on all these matters as far as we have knowledge of their wishes. I am here representing a people that are decidedly in favor of a change in the mode of voting. They desire to vote by ballot. As has been said by the gentleman from Upshur, I believe I have no tenacity myself in regard to it. I would as lief vote with the candidate I was voting against sitting at the table as not; but I imagine all men are not so - I know they are not so. There is an influence brought to bear on these men by this system of voting that prevents them from a fair expression of their opinions through the ballot box. The candidate may be wealthy or may have a great many men dependent upon him for their daily bread at the time of election. He goes there and places himself there to take knowledge of those men as they deposit their ballots. He may even make threats beforehand what he will do in case they go contrary to his wishes.

But there is another great objection, too, in this thing. A man that is acting as a demagogue, wanting to keep down the full expression of the people, goes to the ballot box at a certain hour in the day and then goes out and tells men, sometimes, truthfully and sometimes falsely, that such is the state of the vote and that this man is going to be the successful candidate, the man who will collect your taxes and serve writs on you, and you had better vote for him. And in that way these men are controlled and influenced to vote for the man that they believe will be the successful man although their wishes are the other way. There are numerous examples of this. It was said by my friend from Marion that the attorneys of their county have all gone down to Richmond, expecting to be President of the Confederate States as soon as Jeff. Davis is established. Well, this idea of men being successful has a great influence. They did that because the rebellion would be successful. Well men vote because they think it will be on the strong side.

This system of ballot prevails almost everywhere in the United States. It appears to have worked well. They have by the practical workings of the system proved that it works well. Let me say too in regard to the experience of my friend from Doddridge. He says these politicians get up their tickets in different ways so that men know exactly how a man votes - some tickets long and some short, blue and white, and various colors. I believe that is all true; but when a man goes to vote he has the ticket folded up so in his hand that no man can see his ticket until he places it in the hands of the officer. The officer cannot go out of the house and tell every person how that man voted, and consequently I do not see the weight of his argument. It is not so much matter if it is known after the result is known. But the gentleman uses an argument of this kind, that if we did not vote by ballot we would never have obtained a knowledge of these secessionists. Let me ask if he considers that any very valuable information? (Laughter) I know more about the secessionists than I care about knowing. I do not know all the secessionists in this country, but I think there are more in it now than there will be a few days hence. And I hope the day will come when there will not be any. I would rather not to have known our men in our county to have voted this way than to have known it; I have such feeling of abhorrence against them, I have no special desire to have knowledge of that kind that appears to be so valuable to my friend from Doddridge. But if we had voted by ballot, even I think where there is so much corruption, in the city of Richmond - where after voting for men as Union men and electing two out of three to represent them in the Convention that passed the secession ordinance, yet when they came to vote on the ordinance there were but four men had the firmness to go up and vote against that ordinance. This day there are hundreds in that city, good Union men, but they would not dare to vote under the present system against this ordinance. It is said, that if it had not been for the viva voce plan of voting Virginia would never have voted herself out of the Union. I do not know whether that is true or not. My friend says he believes it, and I have no doubt that is a pretty general belief - that she would not have voted out. They could not come up and vote with the influence and compulsion against them, when under their system every man's vote was known.

As I have already said, I have no tenacity, as it regards myself. I make it a matter of duty and conscience. I vote for a man the best qualified and if the other candidates see fit to mark how I vote, let them do it. But I believe this would give the fairest expression of the opinion of the people. I believe it is the mode adopted perhaps in nearly every state in the whole United States, with a few exceptions; and it is far preferable - it is the wish of the people - it should be so. I understand from members here - with some I have conversed - that they have no particular tenacity about it but that it is the wish of their people. Then if it is the wish of the people, and a better plan than the other I am in favor of adopting it. This is an age of improvement and we ought to make improvements here. There is wide room for some improvement; and I think this is one of the improvements we ought to make, and one of the changes we ought to engraft in the Constitution of West Virginia.

MR. DERING. I rise for the purpose of saying that I am in favor of the amendment, to vote by ballot. So far, sir, as I have heard any expression of opinion on the part of the people of Monongalia county, they are decidedly in favor of that mode; and I think, sir, if we wish the security of the ballot-box, that that is the mode we should select. I think, sir, that in doing so - in making the ballot box pure - we inaugurate a measure which will perpetuate and maintain good government, and that without the purity of the ballot-box, our government will not remain pure, will not be perpetuated. I consider, sir, that voting by ballot is the only way to get a free and independent expression of the electors. By voting by ballot, sir, you leave a man free and untrammelled. He can go up and deposit his vote and no one knows whom he votes for unless he sees proper to disclose the fact. Leave then the citizen untrammelled; let him go to the ballot-box and vote the independent sentiments of heart, and you will preserve the independence of the citizen, and throw around the ballot box a purity that we cannot attain by the viva voce mode.

I, sir, did not rise for the purpose of making a speech, but only for the purpose of indicating the sentiments of the people of Monongalia county so far as I had heard them on this subject, and I think from the general "concurrence" in opinion here that there seems to be on this subject, that there is no need of arguments. They are so plain and potent that they must strike every mind as favorable to this amendment.

MR. PAXTON. I desire merely to say that I concur heartily in the amendment proposed - especially after what has been said here by these gentlemen, and more especially because I believe this Convention is already prepared to settle the question by a vote in its favor. Whilst upon the floor, however, I will state a fact or facts, that may be of some interest and may have some influence in regard to the manner of voting. In the states of Missouri and New Jersey, I am not advised, I presume however the mode is by ballot.

MR. VAN WINKLE. In New Jersey, by ballot.

MR. PAXTON. In the States of Virginia, Kentucky, Georgia and Oregon, the viva voce system is prescribed. In the two latter, their Constitutions although prescribing that mode gives their legislatures authority to change that for the ballot system; and I think it not improbable, although I do not know the fact, that they may have done it. However, in every other state of the thirty- three, the constitution of each state prescribes the ballot system, of voting. We thus have the almost unanimous verdict of the people of the United States in favor of that system; and I hope, sir, in the face of that we shall not now adopt a contrary system, because perhaps (and perhaps only) because having been accustomed to it always, we have natural prejudices in its favor. I hope, sir, we may be allowed to profit by wisdom and experience even though they come from beyond the border of Virginia; for, sir, there is wisdom outside of the limits of our own State, and it is no disparagement of the State to say so.

MR. BATTELLE. I do not intend to say much, sir, but simply this: that I very heartily favor the amendment proposed; in the first place because I believe the people whom I have the honor in part to represent are in favor, of it, and because I believe it is the best mode, and because I am heartily in favor of it myself. I think voting by ballot very greatly contributes to the freedom of elections. It has been already stated that in the various relations of life there will be more or less from various causes a feeling of dependence one upon another; and I have long been satisfied from years of observation indeed, that the present mode of voting here does give an undue power to men of wealth, influence and position - especially to party leaders - to unjustly control the exercise by others of the right of franchise. We may say this ought not to be so, that men ought to vote their real sentiments in the face of all intimidations; but that I judge does not alter the fact that they really do not. It is unquestionably the case, sir, in these very times, perhaps in portions of our own State as well as in other communities; where it would require a great deal of firmness and patriotism and independence - more, perhaps, than most men possess - to go up and squarely in the face of a large employer or prominent party leader, vote directly opposite to what the voter knows to be the sentiments of that individual. There is no question in my mind but that consideration has time and again controlled and ruled the elections of Virginia, as well, sir, as elsewhere where that mode is employed. I am for making this right free, to every citizen to exercise without let or hindrance his own choice, without dictation either expressed or implied.

In reference to the remarks made by my friend from Doddridge, and my friend from Hancock, touching the vote of this State on the ordinance of secession, I think it affords a most admirable illustration of the matter in point, though I would not make exactly the same use of it as the first named gentleman did make. I think it highly probable had the mode been by ballot, Virginia would not have today occupied the position she does occupy. There is no other theory upon which I can account for the sudden transformation from the vote in February to the vote in May except this domineering influence of political leaders, and other influences at the polls, restraining and controlling and dictating that vote. I would take away that temptation.

There is another consideration, however, which has not been mentioned, and it is the comparative expense of the two modes, and comparative speed. I am not familiar enough with the details of voting to give, perhaps, anything like an approximation to the exact proportion; but when you have a long string of candidates to be voted for, say, from six to eight or ten, as is the case in some elections, the voting viva voce is, we all know a very tedious way, and the voting by ballot is simple and expeditious in that regard. It may be indeed that the counting up after the vote is over is longer by the ballot than viva voce; but the taking of the vote is by the ballot method vastly the more expeditious, and very much less expensive. I think, sir, that should this Convention fail to incorporate the principles sought to be incorporated by this proposed amendment, they would fail of one modification most essential and one required by the nature of the case and the known voice of our people.

MR HAGAR. From the past and present only we can judge in reference to the future. As you know, I live in Boone. Some of

you know that I live very near the center between Chapmanville and Boone Courthouse. I am very confident from living all my lifetime in that neighborhood, and being acquainted with almost all the people in Boone county; that if the vote had been taken by ballot there would have been at least one hundred or one hundred and fifty votes in favor of staying in the Union. At the Courthouse, as most of you know there was but one vote given for it, that is in favor of the Union, and it was with great difficulty that man got away with his life. It was declared previous to the election that any and all who should vote for the Union should be hung forthwith on the public square. The Union men talked among themselves and agreed, or at least partially agreed, that some forty or fifty would unite and go there and vote anyhow for the Union. But when they found a drunken mob arrayed against them there, their hearts failed them and the treatment the first man received deterred the rest and there was no other vote given for the Union there. Some twenty, perhaps, went off without voting, and the others were forced to vote for secession. These things grew out of the power invested in the hands of a few there. They have monopolized the places - merchants, lawyers, prosecuting attorneys, and clerks.

At Big Coal river next to Kanawha, at the February election they gave a very large majority in favor of the Union - perhaps there was not one dissenting voice. In May there were about one-third, or nearly so, for secession. Why? Because it was packed. A leading secessionist, a William Thomson, ruling the principal part of that county controlled the election. The result was that all the votes at one precinct were given in favor of secession principles and practices, and half at another, ruled by two prominent secessionists. Just across the way, over at Chapmansville in Logan county, there was only one man there out of fifty that wanted to vote for the Union dared do it. The result was it was with great difficulty he saved his life by having the name erased. If the vote had been given by secret ballot the great probability is, Boone would have gone strong for the Union and Logan would probably have nearly tied off. Instead of that there was 450 of 700 for secession in Logan.

I am in favor of the ballot box.

MR. STEVENSON of Wood. I am very decidedly, sir, in favor of the amendment proposed by the gentleman from Hancock. I believe, sir, I will not urge any consideration in favor of that amendment that has been already urged, at least not at any length. There are a few considerations, however, sir, in favor of this ballot system of voting which in addition to what has already been said I would like to trouble the Convention to hear.

Before proceeding to that, Mr. President, I will state that I hold in my hand a petition signed by between two or three hundred citizens of the county which I have the honor in part to represent here, in favor of this system of voting - voting by ballot. The petitions are indited in respectful language to the Convention, and as far as I have examined it, and as far as I am acquainted with the signers, a number of them are prominent, and I believe all of them respectable citizens of the county; and if there is no objection on the part of the Convention, I would like to lay the petition on the table. It is not just in order now, but I will just read the heading and dispose of it in that way:

"To the Constitutional Convention, assembled in the city of Wheeling:

"The undersigned, citizens of Wood county respectfully ask your honorable body to insert a provision in the new State Constitution requiring all elections by the people to be by ballot." (Handing the petition to the secretary.)

It seems to me, Mr. President, that the strongest argument that could be adduced in favor of this system is found in this fact: that in all those states where that system prevails - and as has been shown they form a large majority of the states in the Union - it gives almost universal satisfaction. It works well, and I believe there is not a single State - at least not within my recollection - that having once adopted the system of ballot voting has ever changed from it to any other mode. Some of them have perfected the system, have improved upon it, as they have in Massachusetts and some other of the New England States, by adopting a more perfectly secret ballot.

Now, sir, this is a practical argument in favor of that mode of voting, and of all arguments that can be used in favor of this or any other subject, these practical arguments are of the strongest character. It seems to me that is an unanswerable argument in favor of this system of ballot voting. Now what works well in New England, New York, Pennsylvania, Ohio and the great Northwest, will work equally well in the new State of West Virginia; and I think we will make a very grave mistake if we leave this Convention without inserting it as a part of the new Constitution; because I believe it is demanded by a very large majority of the voters within the limits of the proposed new State.

If there is any one privilege which is exercised by the American citizen that ought to be specially and carefully protected it is the exercise of this right of suffrage. A man should vote untrammelled; he should vote freely; he should vote without any undue influence from any man or from any party; and if he cannot do that, sir, or if he does not do it, so far as that great right is concerned it is partially a failure. Now I undertake to say that that can be done, but I will say what is a stronger proof of my position, that it is not so under the present system of voting. Now, that has been alluded to already, and I ask any man to call up what has taken place under his own observation and ask himself if he has not seen it in hundreds of cases where men are frightened into voting - and frequently against their conscientious convictions - on different questions. Now, sir, we have the fact there, and you may bring as many Virginia abstractions as you please - and they are the most abstract of all abstractions - and pit them in favor of viva voce voting and it will not affect this practical proof when the right of franchise is exercised silently, quietly, independently in that way, it is then, sir, that the language of the poet is true. It is a power which

"Falls as gently as the snowflake on the sod
But executes the freeman's will

As lightnings execute the will of God."

But, sir, there is one consideration that has not been alluded to at all; and I think it a very strong one in favor of this proposition. Where are your people to come from that are to settle up the valleys and the mountains of this new State? Where are they to come from? The natural increases of our population will not supply them unless the list of old bachelors is reduced very rapidly (Merriment). Now, sir, the increase of that population is to come from those States - the great bulk of it must come from those States - where this system of ballot voting prevails and where it is popular; and the people will travel from those States to the other States which have adopted the same system of voting. Now if you can adopt a system here which will be - as has been shown here clearly, I think - of decided advantage to the voter and benefit to the State, at the same time furnish an inducement for the introduction of a population of the right kind, and with that population capital to develop the resources of the State, I ask if this is not a very strong argument in its favor? Why, sir, here is timber in our mountains, ore in our hills, coal and oil beneath the surface of the earth, and natural resources as great probably as are to be found within the same limits anywhere in this broad land, and there they lie undeveloped; they are worth nothing to the State. You may put it down in your reports and speeches about how much the State is worth - she has so many millions of feet of timber, or tons of coal or iron or gallons of oil. Why, sir, your mountain of coal or iron is not worth as much as barren sand or soapstone until capital and labor are brought into the State to develop it and give it such shapes as will make it convenient for the comfort or use of man. Then it will be a source of value, yet not till then. Now one of the ways to introduce that capital is to invite that class of population; and you cannot get them unless you incorporate into the Constitution these ideas of progress in which the people of other States are in advance of us - not as rapidly as desirable unless you incorporate this and other provisions of a liberal character in the organic law of the State.

Now, there is another reflection - I do not wish to detain the Convention, but it is this. It occurred to me very forcibly yesterday in reading the Governor's message because he has thought the matter of so much importance as to allude to it in an official document and put it upon the records of the country as a fact that can be referred to by the generations to come after us - and that is this: that those men over there in the city of Richmond (now I believe they have begun to think they will be "food for gunpowder", and have emigrated to Nashville) - but these men in the city of Richmond and the South who have conspired together for the destruction of their country - that country which has enriched and protected them - have not only done that but they are now conspiring and perfecting measures for the destruction of popular liberty itself. They are now devising plans to abridge this very right of suffrage, that will not only cripple the citizen in the exercise of it but in some cases absolutely deprive him of its exercise altogether. Now I ask in consideration of this fact whether it is not proper and politic and judicious and right that the people here in northwestern Virginia who have been loyal to their country and I hope and trust in God and firmly believe will remain loyal to the end to that government which protects them, and which acknowledges too the principle on which this new State is to be organized, that the people govern - whether it is not proper that that State should go in the other direction, by perfecting and protecting these popular rights - not by introducing a system to corrupt politics, not by a licentious use of this great privilege, but by properly guarding them all, and seeing that after they are properly guarded the citizen is perfectly protected in the exercise of them. Now, sir, I think that is a very strong consideration in favor of this proposed policy of voting by ballot.

The only additional thing, gentlemen, which I have to say, Mr. Chairman, is this: that in the matter of economy, so far as I have been able to investigate the subject, the method of voting by ballot is decidedly cheapest. Now you may take our local district or precinct elections, and in some cases we elect from six to twelve persons to fill offices. I do not know but it sometimes goes beyond that. Now it will require from four to eight or ten persons to conduct the business of election in that particular district under the present system of viva voce voting. Now you take in those States where the system of ballot voting is adopted the same number of persons to be elected, and the election will be conducted by a much less number of officers and of course at a less expense. If now the aggregate amount paid out at these district or precinct elections is very enormous, and if the system of ballot voting with all the other advantages which have been urged in its favor and not contradicted, is more economical and would save several thousands of dollars annually to put into the coffers of this new State, I urge that as an important argument in its favor.

I have but one more word to say, and that is in reply to my friend from Doddridge. It is in reference to the abuse of this system of ballot voting. I may say here that it is impossible we can adopt any system that will not be liable to abuses; nor do I understand any gentleman as urging - this as entirely free from them, but as being freer from them than the other system, having less disadvantages, less difficulties and fewer objections. Now, sir, I have observed to some extent the voting in States where this system prevails and I must differ from my friend in what he said in regard to the vote of persons being known. That is as a general thing not the case. They may be known sometimes; but if a citizen is disposed he can vote so that it will be almost impossible even for the officer of the election, to determine how he voted. He may take any of these differently described tickets the gentleman alluded to; they may be black or blue, or white, or long or short, or round or oval or square; or the voter may get a ticket just printed like those of the other party, or he may take a piece of blank paper and write his name on it; but so far as that is concerned, I will just say that I believe that the practice of printing tickets in different colors and lengths has been abandoned almost universally and nearly all the tickets are printed alike, so that the Democratic and Republican tickets and Union tickets are pretty near the same shape and size and color, however much the parties may differ in these respects (Laughter).

MR. SINSEL. The people I have the honor to represent, as well as myself, are decidedly in favor of voting by ballot, having seen and felt the evils resulting from viva voce voting. It is not an uncommon thing for a man there to have persons largely indebted to him; and they demand of these persons to vote for them, if they do not they will institute suit against them; and it is frequently done. Last winter, when the contest was probably the hottest and severest we ever had in the county of Taylor, Union and Disunion, the day after the election there I presume there were twenty suits issued against Union persons that failed to vote for the men that desired their votes. And in addition to that it not infrequently makes enmity between friends for life. Here are two persons running. They both claim me and insist on my voting for them. I cannot vote

for both of them. One may be my personal friend and the other I may care less about, but I see he is more competent. I vote against my personal friend, and the result is I have offended him, and not infrequently for almost an age. In addition to that it is not uncommon for the proprietor to go round among his employees and say, my friend is running, now you must vote for him. They look around them and they are almost entirely dependent on him for their daily bread, and almost urged by the necessities of supreme need, they are compelled to vote against their will or else be thrown out of employment.

So I shall vote for the amendment.

MR. LAMB. I want to make a speech on this subject, but trust the Convention is not much alarmed at the announcement as I can assure them it will be a very short one.

I am decidedly in favor of a vote by ballot. Ohio presents herself on that subject a unit. But the indications are such that an overwhelming majority of the Convention is on the side of the question as to render it unnecessary that there be any further discussion of it.

(Cries of "question")

MR. BROWN of Kanawha. I desire to say one word, and that, too, notwithstanding the indications may be as the member has said, that there is an overwhelming majority in favor of voting by ballot.

I have listened, sir, with much attention to the arguments of gentlemen who have discussed that side of the question, but failed to hear any arguments touching the real merits of the case. I have listened attentively if I might hear from advocate of the ballot system something that would satisfy an inquiring mind anxious to arrive at the merits of the case; but I have listened in vain. It is said that the ballot system works well in other States but what evidence have we of the fact? We know if the public press is to be relied on that the frauds in elections where that system prevails have grown so frequent and common as to have acquired distinctive names, such as "stuffing the ballot box"; and indictments for double voting at the same elections are so numerous as to show something of the evils attendant on the system.

It has been said that men are overawed and afraid to vote their preferences at a viva voce election. But who can point to an instance in the history of Virginia where the votes have been suppressed or increased or corruptly misapplied? Such a thing would be impossible in the presence of the parties most interested in it, and the vote proclaimed publicly. I was reared in Virginia and have attended many elections at different places in the State and I have yet to see a fraud practiced in an election or -

THE PRESIDENT. The hour for taking a recess has arrived.

MR. BATTELLE. I move that the time be extended to allow the gentleman to complete his remarks, and then take the vote.

THE PRESIDENT. The gentleman may proceed, there being no objection.

MR. BROWN of Kanawha - (resuming) I have yet to see a fraud practiced in an election in Virginia, or a voter quail before the presence of some august citizen with whom he differs in the high prerogative of voting.

The argument against viva voce voting and in favor of the secret plan seems to be predicated on the idea that the people are such cowards and slaves that they will not dare to come up to the polls like men and speak aloud their preferences, but will truckle before the frowns or displeasure of some arrogant person present. My experience is that the contrary is true, and that on an election day in Virginia, more than any other, the poor man feels his consequence, self-respect and equality with the highest and richest in the land, and when he votes it does him good to show it in the independent tone in which he proclaims aloud when called upon to cast his vote. The viva voce system tends to encourage a manly independence in the voter, and leads him to prize the privilege of voting more highly - a most important consideration in an elective government. The one system appeals to the voters as independent freemen, the other appeals to their fears and sense of inferiority. The one encourages a sense of equality and self respect; the other suggests the want of both. The one is a Virginia system, long and dearly cherished by our people; and I cannot consent to part with it without a better reason than I have yet heard from the advocates of secret ballots.

The right of suffrage is a fundamental right to every freeman. Our whole institutions are based on the principle that the government is in the hands of the people; and it seems to me if there is anything that we ought to encourage and impress on the minds of the people, it is the great right that belongs to them, that they should never be ashamed to own and proclaim to the world that it is their right. I know no right that a freeman has in this country that he does boast of as much as the simple fact that he has the right to go and choose all the officers of the government. And now, sir, that you shall institute a policy, the very basis of which is that he is afraid or ashamed to come up in open day and put his vote in the record, seems to me ignores the very groundwork of our institutions.

These, sir, and other reasons must influence me to cast my vote against the amendment; and I do hope we will stand by that fundamental principle of this old Commonwealth, and that as we have retained the name, we will also retain the

distinguishing feature of Virginians - that we have ever voted open-mouthed before the world.

MR. STUART of Doddridge. I desire to propound the question, sir, how it is that you are going to determine when voting has been corrupt? If you can always rely on the judges of your elections who receive the tickets and know that they are pure men, not liable to do wrong; it may be perhaps safe; but how are you going to determine when corruption, takes place? Or what way are you going to secure yourselves against this evil? Now, sir, if I attached the importance to this thing that some gentlemen do, I believe I would go for ballot voting. If I thought it was going to disembowel our hills of their minerals and make us all rich, because we voted by ballot I would go with you. But I presume a gentleman emigrating to this State will never ask the question. I would not ask it myself, and I have no idea it has that effect. But it does seem to me the disadvantages accruing from ballot voting are more than enough to counterbalance the good it may effect. I confess I have greater confidence in the high-toned, independent, moral character of our people than some of my friends seem to have, because I must say in all my experience when I have been a candidate, I have never yet seen a solitary man influence another man's vote. Never have. That is an independent character that seems to be stamped and inherent in the principles of Virginia; and I am loth, sir, to leave it, from the fact that I cannot see any good growing out of, or any evil to be removed by, a ballot vote.

Now, again, suppose illegal votes are put in the ballot box, I want to know how either party would have an opportunity of contesting the vote. It is true you can purge the polls and strike off and cast away these ballots which are put in by parties who have not a right to vote, but you do not know who they were and you cannot determine whom it was that they cast their votes for. Now, sir, as before remarked, if we propose any remedy by which we can keep pure the ballot-box, and ascertain and detect any corruption on the part of the judges of elections, then I am ready to adopt it, but until then I must oppose the proposition now before us.

MR. STEVENSON of Wood. I would like to make just one single remark by way of explanation and reply to the remarks of the gentleman from Doddridge.

MR. VAN WINKLE. I shall be compelled unless the question be taken to move that we take a recess.

MR. HERVEY. I move to adjourn.

MR. VAN WINKLE. If the Convention will take the question I am willing to remain for the purpose, but if this discussion is to go on, there is nothing ever gained by a transgression of the rules.

The vote was taken and the amendment adopted.

The Convention then took a recess.

THREE-AND-A-HALF O'CLOCK, P. M

MR. STUART of Doddridge. Mr. President, we fixed the order of the day at twelve o'clock. I suppose it would be in order now to call it up - that is the report of the Committee on Boundary. It is not one of the regular committees and does not come under the general rule, still I make the motion to take it up and consider it section by section as we do reports from standing committees

The motion was agreed to.

The first section was reported as follows:

"RESOLVED, That in addition to the thirty-nine counties mentioned at the close of the first Section of the Ordinance convening this Convention, the counties of Pocahontas, Greenbrier Monroe, Mercer, McDowell, Buchanan and Wise, be included within the boundaries of the proposed new State."

MR. LAMB. Mr. President, I move to strike out the counties of Buchanan and Wise. I am willing to adopt a natural and proper boundary for the New State, but my objection to those counties is that a natural and proper boundary does not include them. It would be in fact constituting an additional "panhandle" on the southwest, and I am opposed to all panhandles.

It is impossible to restrain this matter in any other way than by an inspection of the map. If these other counties included in the first section are incorporated there will be a natural and proper boundary on the Southwest as well as on the Southeast. The new State would then have a mountain boundary throughout, wherever it bordered on secession dominions. It may be that with the difficulties we are naturally to expect having a mountain boundary throughout the length of the new State will be a matter of great, perhaps vital, importance to us. As those two counties lie on the map, there are a mere excrescence it seems to me to the natural and compact form of the new State; and I know no particular reason why they should be included.

I hope it will be the pleasure of the Convention to strike out those two counties.

MR. STUART of Doddridge. I am not very scrupulous, Mr. President, about the two counties indicated by the gentleman being stricken out of the first section here. I believe that question was before the committee, who argued that from the natural position and the natural boundaries of these counties indicated here that it really was for self preservation, for the preservation of our State, that we should include them. The two counties indicated by the gentleman are not included in that category. They are not exactly within the mountain range, I believe, of some other counties, but so far as identity of interests is concerned, they seem to be identical with us. Here I see in table A, the county of McDowell, with a white population of 1,535, with no free negroes and no slaves - which is an anomaly in Virginia; and it does strike me, sir, that these counties are identified with us in every particular. They lie contiguous to us, the only objectionable feature is that they run down there into a kind of panhandle. I am not for excluding myself because it does not make a very nice boundary for the new State; and I think their interests are identified with us and that they desire to be a part of our State - which I have no hesitancy in saying they must desire from their location, identity of interests, habits and everything else.

But, sir, I do not propose to detain this Convention any length of time in a discussion as to the merits of taking in these two counties. There are other vital questions that will arise, I presume, on other points.

MR. BROWN of Kanawha. I desire to say a word on this motion. The only reason I have really understood from the gentleman from Ohio for striking out these two counties is his objection to panhandles. Well, sir, that is a strange reason to come from a man who lives in a Panhandle. It would seem the gentleman was sick of his place of residence, and the form of the place that he has chosen as his habitation. Now it seems to me that there is a real and obvious reason why these two counties should be included in this boundary. If you will begin on the Ohio river, ascend the great Sandy, you traverse up the county of Wayne till you come upon the county of Logan and the next county in the rear and above the county of Logan is the county of Buchanan, and then on with the branch of the Sandy that runs up the edge of Kentucky and terminates in the county of Wise - both forks of the Big Sandy river do - and form the Southern boundary of the counties of Wise and Buchanan - you ascend those rivers till you reach the mountains, and when you terminate on the mountain range at the head of them you are on the southern border of these counties. Now I ask the gentleman - these people are a mountain people, without slave population as this census shows - the county of Buchanan has but 30 and the county of Wise but 66, showing a smaller proportion of negro population than any other portion of the State for the same extent of territory and number of people. Well those people are identified with us in interest, in habits, in the formation and locality of their country; for all the waters that drain those counties flow right down into the Ohio, and the mountain range that is their southern border is the range that divides the waters of the Sandy from those of the Clinch, that runs down into Tennessee. Then geographically why should we not take them in? Why take in any county West of the Alleghenies? If they are not Western Virginia there is none. If we follow the waters on which they live until they debouch into the larger streams, to the great markets of the West and make this the guide to judge whether they are Western Virginia people or not, if they are not, who are? Now if you exclude them you make this people cross a mountain range to seek intercourse with a people from whom they are naturally separated. It seems to me it would be an actual injustice to our friends and relatives to make a discrimination against them when the only reason assigned is that the gentleman is tired of panhandles. Why, sir, I think panhandles ought to be encouraged from the good this one seems to have done us in this case; and the day may come when this other panhandle may return the compliment and save the balance of the State as we have been saved by this panhandle.

Here is a small population, it is true, but a considerable territory. Is territory nothing in the formation of a State? We have paid large sums to acquire barren territories in the government of the United States. We were almost involved in a war with Great Britain a few years ago for a few acres of ice-bound and ice-clad mountains on the Oregon frontier. I say then if we adhere to the American principle which is to hold on to all the territory we get, there is a strong reason here why we should hold on to these two counties for it is manifest our territory is small at best. Sir, you cannot with a limited territory of mountain country - a country not suited to the growth of cities - have a populous State; and therefore it is essential that you must increase the territory to increase the population. I suppose no Virginians in entering the Union with a State would desire to have a little picayune State in size and substance with two members in Congress, with no hope of ever getting any more - an old state in one sense, perhaps falling in the rear of Kansas tomorrow. It ought to induce us to take this territory at all hazards and that especially when we have reason to believe the people there are heart and hand with us, because they are of us.

I therefore hope these two counties will not be stricken out, but be retained as part and parcel of the territory and people with us.

MR. VAN WINKLE. I shall be unable to vote on this proposition as it stands at present, and I think when I state my difficulties other gentlemen will find they are their difficulties also.

These are among the counties mentioned in table A., in the first resolution. Another set are mentioned in table B., second resolution. It will be found if the counties in table B shall come into the State, the counties which it is now proposed to strike out will be inclined to ask as Mr. Webster did on a former occasion at Boston, "Where am I to go?" If the counties of Russell and Tazewell are brought in under the second resolution they will completely separate the counties in relation to which the discussion is now going on from the balance of the State of Virginia. Russell and Tazewell are the eastern or southeastern boundaries, of Buchanan and Wise, and also of McDowell. To obviate this difficulty, as the same one will arise in relation to particular counties when we come to consider the third and fourth resolutions, I move we now pass from the consideration of the first resolution to the second. If we decide on admitting those counties then the admission -

MR. LAMB. I do not think there will be any necessity for that at all. If the counties of Buchanan and Wise are stricken, they are necessarily to be inserted in the second, and that will relieve all the difficulty and meet all the objections.

MR. VAN WINKLE. Is that the motion?

MR. LAMB. No, sir; we must take up one section at a time; but it will be a necessity - it follows as a matter of course - that if these counties are stricken out of the first, they will be inserted in the second,

MR. VAN WINKLE. Well, sir, with that understanding my difficulty is removed.

MR. STUART of Doddridge. There is another difficulty. If we include these five counties here that gives us a population of 319,270 with a fraction of 65,000 which gives us an additional representative in Congress; but if we take out these little counties of small population, we only get two representatives with a large fraction that would nearly give us another - a fraction of 61,000, perhaps. You see - it does strike me, from this consideration, we ought not to strike out these two counties; for if we do, we go into Congress with but two representatives with a fraction that would nearly entitle us to another, and if we retain them, we go into Congress with three representatives. It is certainly of some importance; and I for one would oppose the motion to strike out for that reason if for none other. Let us have them altogether. Let the question come up fairly on the admission of the five counties.

MR. LAMB. I am astonished at the gentleman from Kanawha to have supposed I was serious in the remark I made about panhandles, and yet he has founded a large portion of his argument on that supposition, as if I, here the inhabitant not of a panhandle but of the panhandle, should disclaim all attachment to it. Still, sir, where the question is presented to us what counties we will take in and what leave out - if we are to parcel out this State according to our own good will and pleasure, and constitute a new State - let us at least, compose it of a compact and defensible territory. Let us not be sticking on excrescences here and there which it will be utterly impossible to aid in times of difficulty and danger, or from which for our own defense under such circumstances we can derive no aid. The gentleman may be somewhat more familiar with the territory in question than I am, but from an inspection of all the maps I have been able to examine I do not see how the counties of Wise and Buchanan could communicate with the outer world except by going through Kentucky. These streams the gentleman speaks of all run into Kentucky. The people who inhabit these mountains - the mountains of Wise and Buchanan - I am told, are strong secessionists, and they have furnished a large quota of men to the secession army which recently fought the battle at Picketon, Kentucky. They live along the borders of that region of country. Are there any roads from this section of country into the portion of Virginia which it is proposed to take? What are the means of communication with that portion of the State? If I am not mistaken, that gentleman told me himself there was but one practicable road by which the people of these counties could get into Virginia.

If then it is a territory which is not naturally included in our boundary - if we wish to make a compact State - if leaving these out we have a natural mountain boundary all around us - if it is merely attaching excrescences - had we not better leave them out? Such at least were the considerations which induced me to think it would be better, even if we are at liberty to take what territory we please, it would be better for us to leave out these two counties. They do not belong to us; their natural communications are with Kentucky; their only outlet down those streams, of which the gentleman speaks, is into Kentucky. Nor do I think that the gentleman from Doddridge is correct in the remark he makes that the addition of these two counties will entitle us to another representative in Congress.

MR. STUART of Doddridge. Better make some calculations so as to ascertain.

MR. LAMB. You would go before Congress, not claiming a representative under the regular apportionment, but a new state, a small state claiming two Senators; and it would be for them to assign in view of all the circumstances its proper representation in the House of Representatives; for that question would not be decided on a mere fraction of a few hundred more or less. Under all the circumstances, the question would present itself - under all the circumstances, shall we allow an additional representative for a mere fraction? I do not think we would get it, unless you presented yourself full up in numbers. But anyhow if we want to add a few hundred in order to overrun the 127,000 to furnish a claim for another member of Congress, take it from some territory that naturally belongs to us.

MR. POMEROY. I would like to ask a question; whether this report, which appears not to be contradicted, that these people voted nearly unanimously for secession, is true? Not only so but they went over into Kentucky and fought in the battle of Picketon for it. I would like if gentlemen would say here if we want that kind of a people added to us? I am informed that these counties voted nearly entirely one way and voted for the Ordinance of Secession. If they are that kind of people, others may vote as they please, but I would beg to be excused from voting for any such people as that to come into the new State.

I would just remark in regard to the fraction that has been spoken of by the gentleman from Doddridge, that the numbers of members of Congress is fixed; we cannot by any action of ours alter that. We will have a larger population, which will come nearer entitling us to another member by the reception of the counties of Hampshire and Hardy which are already represented on this floor, and which have shown some signs of a wish to be included.

I am not prepared to say whether these counties ought to be stricken out or not, but if it is true that they voted as represented they ought to be.

MR. HAYMOND. I move to amend the motion of the gentleman from Ohio by striking out all after the words "thirty-nine." If we go and include all this country, we shall defeat the whole movement; and I shall vote against it.

THE PRESIDENT. The chair has doubts whether the motion of the gentleman from Marion would be in order.

MR. LAMB. I think it would be better for the gentleman to withdraw the motion for the present. The better way to get at his object would be after my motion is accepted or rejected to let the question come upon the main resolution which involves the very matter he wants to get at.

MR. HAYMOND. I withdraw the motion.

MR. BROWN of Kanawha. In reply to some interrogatories of gentlemen, I must say that I really do not know what the vote was in the counties of Buchanan and Wise. I have seen gentlemen from those counties who told me the people there were about equally divided. Whether they furnished any material to the army that assembled at Pike-ton I have no knowledge, nor reason to believe they did. Those counties lie far above the county of Logan which lies opposite Pike county, of which Pike-ton is the county town. Logan county which you will perhaps include here I understand to be a nest of secessionists, and that they did furnish troops to that secession force in Kentucky. But I have never seen a man who would say that Wise or Buchanan did. They may have done it, but I have no knowledge of the fact, and they are some distance from the place and I have no reason to believe that they did. Perhaps they have gone there; I do not know. There may have been Union men from those counties too, who were forced there; for I take it for granted when one went the other was close by for I presume their wishes in the matter were not consulted there. But if that is an argument for excluding these counties, why Logan, part of Wayne and Wyoming and all of Fayette, ought to be cut off. That is a very dangerous game; and if you attempt to play it on principle I do not see where it would stop.

MR. PARKER. I talked with several of the military gentlemen who were at Pike-ton and the information I got from these men uniformly was that all round in that neighborhood, or over in Virginia as you approach Tazewell, the home of Floyd, there is nothing but secesh. That is their report. Not a single exception! So much for their political character. It seems to me in judging from the map - I have never been there - but it seems to me from the location of these counties, that their commercial and natural connection is with the southwestern counties, those that have the railroad. There is a small creek I think touching both of them, that runs through the mountains into Kentucky. As for their geographical position it seems to me, that their natural connection would be with the southwest. Besides they do form a corner or panhandle or point down there that certainly does not seem to be a desirable excrescence to put on. According to the present division a branch of the Sandy divides McDowell from Buchanan and forms the boundary until it reaches the county of Tazewell and then by the county of Tazewell until it strikes the Alleghany, as I understand it. I am not so familiar or well acquainted with the country as some other gentlemen here. Then if we go on, taking in Mercer, Monroe, Greenbrier, and Pocahontas, we follow the range of the Alleghany until we strike the Maryland line. Certainly, geographically speaking to go and throw in those two counties away down there, even if they were all Union, seems to me worse than absurd; because if we are to cut up and parcel out a portion out of Virginia, we should have a little feeling of taste so far as formation is concerned.

I had some views which I shall not offer at this time in relation to this subject. I have recently looked through the proceedings in relation to the new State so far, and I am unable to see anywhere where this Convention gets the least power over this subject of boundary any more than we have to go over into Ohio and take three or four of her counties. As a point of law I have been unable to find where the power is conferred. I may be wrong, but at the proper time I propose to submit my views on that subject. I will not do so now. I regret that I have not submitted them earlier. I did not get the report until a few minutes ago, and did not examine it until very recently.

MR. HAGAR. I have a partial acquaintance in that country. I have been in McDowell. I do not know much about laying off counties or States. I know a little about the Bible and a little about farming. Take me off of that and I do not know much (Laughter). But by farming for several years, I have learned that a small piece of ground well cultivated is better than a large piece of ground fenced but not cultivated (Renewed merriment). We have in the new State, without these counties, twelve secession counties, in connection one with another; for I have been informed that Floyd made up a good portion of his army there, in McDowell particularly. Now, sir, we have a considerable territory there to clean out before we can actually cultivate the counties embraced already in our State. Add seven more counties then, it makes it more difficult. Will it pay to get them in? The best wisdom is to use the best means that will accomplish the best end. If the government can clean the secessionists out of there, and those adjoining counties and establish our laws I have nothing to say; but I do contend from best experience, using my figure that too large a piece of ground, fenced but uncultivated will not pay. We had better be careful. For my part I think it would be better to strike them out, and if we receive those other counties, why then add them and bring them in.

MR. WILLEY. Mr. President, I fear we are predicating our views and arguments upon the assumption that they are going to have a Southern Confederacy down there. Now, sir, I hope it will not be long until all these counties will be not only in the Union but really and truly of the Union. I have no idea, sir, of regulating our conduct here at all by the remote possibility that they are ever to be out of the Union. They are now in it - a part of the soil of Virginia - a part and parcel of the United States. But in dividing the state I think we should have reference not alone to our convenience, sir, but to the convenience of the other section of the state not to be included in our boundaries; and the more especially so since that other section of the state is not represented here in point of fact. The voice of the loyal men of that portion of the State cannot be heard, because they cannot get here themselves.

Now, sir, if we will look upon the map, my recollection of it is (it is not now before me), if you include these two counties within this State of West Virginia, what sort of a panhandle do you leave to the old state? My recollection is that you leave an iron wedge of immense length and odd proportions, running away down into the country there. If I were a citizen of east Virginia, it seems to me I would very much object to a division of the State leaving my section of it in such proportions.

And I repeat again, sir, we ought here to have regard to the formation, the boundaries or convenience of the territory of the other section of the present State of Virginia as well as to our own. And, sir, I make this further remark; we shall have difficulties enough in pressing this thing through Congress, at all events, and under any circumstances; and whether we look to the convenience of the old state or not Congress will look to the convenience of that state. Congress ought not, and I suppose will not do injustice. It will be a common arbiter between both parties, and look to the territory of the old state as well as to the territory of the new State; and you have but to cast your eye on the map of Virginia according to my recollection of it now, to see that if these two counties are included in West Virginia, you leave a very odd portion of territory appended to the eastern section of the state.

MR. VAN WINKLE. I wish to say a few words on the legality of this proceeding, since it has been drawn into question, and since some allusion was made to it yesterday as a matter of illustration and comparison. It was said we were proposing to do that that we are not authorized to by the ordinance. I suppose no gentleman will deny that we are within the spirit of the ordinance, and that is to fix such boundaries as will best tend - while it is equitable to all others - to promote the prosperity of the new State. But I am disposed to contend that the power is in the ordinance itself. The third section declares: "The Convention hereinbefore provided for may change the boundaries described in the first section of this ordinance" - that is the boundary including the thirty- nine counties 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 also such other counties as lie contiguous to the said boundaries, or to the counties named in this section." It then goes on to provide that: "If the said counties to be added, or either of them, by a majority of the votes given shall declare then- wish to form a 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." In that case they can come in if this Convention so will it.

In the first place, then, a discretion is given to this Convention. Although every one of these counties might have voted to come in, yet this Convention would have the power to exclude them; and the power to exclude includes the power to admit. But sir, there is hardly a county that is named in the report of the committee which does not come within the description of lying "contiguous to the said boundaries, or to the counties named in this section". Or if there is one that cannot come strictly within the very letter of that, it lies so in reference to other territory proposed to be taken in, that it must necessarily be included.

Now, sir, we are certainly entirely within the spirit and intention of the Convention which made this ordinance if not of the ordinance itself. If not strictly within the letter we are certainly within the spirit; and I think there can be no doubt as to the authority of this Convention on those grounds to do what it is proposed to do in this report, that is to include every county named in it.

Well, sir, again, this Convention is now a Convention of the people of the thirty-nine counties with the addition of Hardy and Hampshire. We are met as the representatives of the people of these counties to consider what is best for their interests in reference to the proposed State; and most certainly we are not to be trammelled by an ordinance adopted by a convention representing the whole state under circumstances where information was different, and under the fact that the information and perhaps the circumstances were different from that which is now before us.

And now, sir, in relation to the concluding part of that section: it provides that these counties should vote on a certain day. Now, can it be supposed for one moment, knowing that those counties were in the military occupation of the rebels on that day, that the Convention from which we derive our authority intended they should be excluded on so strict a technicality - as that if they had voted the next day, legally in some way, or the day after, or any other day, that fact alone would be sufficient to exclude them, if this Convention favored their admission? That would be a most extraordinary interpretation of law. It would be, sir, for the sake of keeping to the letter, to renounce the spirit entirely. Obviously the intention of the convention of August last, that passed this ordinance was that those counties should be admitted when the people of the thirty-nine counties represented in this Convention should so decide. I think, therefore, sir, there is no room for a scruple, or, as Falstaff said, for "the smallest drachm of a scruple", on the subject of the authority of this Convention to admit all these counties - I do not say they should do it - but to admit all the counties named in this report, if they should deem it best to do so with a view of having a compact and solid territory and to give natural boundaries such as the Blue Ridge will afford, or for any other consideration that might be named or which may suggest itself in the course of this debate.

I trust, therefore, sir, that every member will feel himself free to vote upon this occasion according to the expediency and circumstances of the case and without doubt as to the power of this Convention to constitute any of these counties it please a part of the new State, either directly as is proposed in the first resolution or by submitting the question to the people of these counties in districts at an election to be held for the purpose. If, sir, we are to be trammelled by considerations of this kind we will find ourselves trammelled throughout. I apprehend that when we are satisfied that we are acting in the spirit and intention and meaning of the ordinance which has called us together it is not of so much consequence whether we follow it precisely according to the letter. Unless the members of that Convention which passed this ordinance were men of more than human prescience they could not have foreseen the circumstances of today. They apprehended that by the election day, the armies of the Union would have advanced and those counties would have been comparatively cleared of an organized enemy and in most of them an election freely held. If they did not so contemplate it was but child's play to be making provisions in regard to this election in this ordinance. But I hope this Convention, not only on this but all other things will feel themselves free to act in reference to what concerns our constituents. We have not, it is true, the power of that convention over many things. That was a convention of the state and its power was coequal with the state and its action would override the action of the legislature. We have no such power; but over this territory, or any territory that it may be desirable to have for this new State, so far as the purpose of making a new state is concerned, I hold that the power of this Convention is supreme; and if we do fix it in this way, and then submit it to the people in districts and they

First Constitutional Convention of West Virginia

should by a majority of the votes cast in each district and by a majority of the counties also vote to come in, and if in that form we submit this project to the legislature and they endorse it and then submit it to Congress and they endorse it - where is the power to set aside any act we do? The legislature have a discretion, of course. They have to take it or reject it. They have not the power over it we have. They cannot amend or alter it. They have nothing to do but to give their assent to it as we propose it. The people within these boundaries will act on this Constitution when it will be submitted to them, and the legislature will have nothing to do but accept or reject it. It is true they may suggest alterations, but they could not be made without sending it back to this body and again submitting it to the people. So when it goes to Congress, they can simply adopt or reject it. Like the legislature they may throw out suggestions and indicate what would enable them to pass it and accept it as we ask them to, but, sir, that is all they can do; and in that case, again, it must come back before an alteration can be made in it. But where would it come back? If this Convention were in existence, it would properly come before it; but if not, another for the purpose would have to be called by the people of the counties interested.

I therefore think, sir - or I am sure, my own mind is very clear, as to the power and authority of this Convention in the premises.

MR. LAMB. If the gentleman from Wood will allow me to thank him for the argument he has made on the subject, I must nevertheless say at the same time that I think the precise question before the Convention does not involve that question at all. When the question shall come up on the passage of the resolution, whether it be amended or not, then the argument which he has made will be pertinent and will have its due weight, and he may probably find that I concur in it.

I presented the motion to reject these two counties simply on the ground of expediency, not on the ground of a want of power; nor do I consider it involves that question one way or the other. My object was simply to perfect the resolution and make the proposition so that in my judgment it would be as perfect as possible. Then comes up the main question whether we have the power or not to adopt that proposition.

The question was taken and the amendment was agreed to.

So the counties of Buchanan and Wise were stricken out.

MR. HARRISON. I now move to amend the resolutions by striking out the word "McDowell" in the tenth line, and inserting the words: "and so much of McDowell and Buchanan as lies north of Tug Fork of Sandy River."

By looking at the map of Virginia, as made by Colton, I find that a small portion of the counties of Buchanan and McDowell lies north of that branch, the Tug Fork of Sandy River, running up to the southwest corner of Mercer -

THE PRESIDENT. The Chair would suggest whether it would not be better to make two motions of it.

MR. HARRISON. This can all be accomplished by one, I think.

THE PRESIDENT. The Chair is of opinion that the motion in that shape would not be in order.

MR. HARRISON. I move, then, that the word "McDowell" be stricken out.

In making that motion I wish it to be understood that if it be the pleasure of the Convention to strike out McDowell I shall then move to insert, "and so much of McDowell and Buchanan as lies North of Tug Fork of Sandy River."

MR. WALKER. Is it the proposition to strike out the county of McDowell?

THE PRESIDENT. Yes, sir.

MR. WALKER. I have some acquaintance with the county of McDowell. I was there in June when this difficulty came up, and I found there were a great many citizens of McDowell who were strong Union men. They lived in a place there, though, where they were obliged to be entirely neutral on the subject; but I expressed my sentiments there as a Union man and I found a great many friends, so many in fact that I was not afraid of being interrupted.

There is a large portion of McDowell where they did not vote on the subject of secession at all, where I think I am prepared to say from being with the people, they are Union people and desire to go with the Union. And I have no doubt it would be to their advantage to come with this new State; and I think when, the Southern forces are removed from that section that they will be entirely Union men or nearly so.

I was there during the summer several times, and I found the voice of the people there was that they desired the Union to be preserved.

MR. DILLE. Mr. President, I had not the honor of being a member of the convention which assembled in Wheeling during the last summer that enacted this ordinance under which we are acting; and hence I find some difficulty - a great many difficulties - arising in reference to it. I am free to say that so far as I am personally concerned, I am restrained by, and

shall be controlled in the votes that I may give in reference to these counties by the action of that convention. It seems to me that the third section of that ordinance restrains and controls this Convention to a very considerable degree. I am inclined to disagree with my friend from Wood in reference to the literal and proper construction that this Convention should give to that third section. It seems to me that we have no course to pursue, if we pretend to act under this ordinance, except that we be controlled by it. "That section of that ordinance provides that this Convention when it shall assemble and attempt to discharge the duties authorized by that ordinance, may permit certain other counties to be embraced within the boundaries of the new State in addition to the thirty-nine counties positively embraced within it. And I am not disposed to question the right and privilege conferred by that ordinance upon this Convention of permitting in the exercise of a sound discretion other counties lying contiguous to the thirty-nine counties to come in and be a part of the new State. But whilst that is the case, there is a positive act that they must perform; there is an obligation resting upon these counties which must act under it before this Convention, as I conceive, can act and permit them to come in. "If the said 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" - then this Convention may in the exercise of its discretion permit them to come in; but as I understand it, these counties -

MR. STUART of Doddridge. If the gentleman will permit me one minute to interrupt him, the course of the gentleman's argument will occur on the adoption of the resolution; but we do not want to argue in this manner on these questions of amendment. I would suggest to the gentleman-

MR. DILLE. If the gentleman will have a little patience and trace the argument, he will find that I will come to that point. The point under discussion, as I understand it, is this: shall the county of McDowell be permitted to come in under this provision of this ordinance? In other words, shall it be excluded from the provisions of this ordinance. Now I hold we cannot - acting on that provision of the ordinance - we cannot do otherwise than exclude her and strike out this provision in this resolution permitting the county of McDowell to come in.

MR. VAN WINKLE. Will the gentleman permit me to ask him a question? I do not know whether he is a legal man or not; but the question I want to ask is this: What is the legal rule where performance is impossible? Is an obligation binding?

MR. DILLE. I suppose if this Convention had desired to attain that object they would have inserted a provision that where *it was possible or where they could do it*, elections should be held. But they did not so declare it. I am merely investigating this with what I have before me.

MR. VAN WINKLE. The gentleman insists that this shall be done legally; I merely ask him this question: that where the performance is impossible, it certainly must be excused - so that the legal argument is against him.

MR. DILLE. I do not so understand it; and I do not understand that the legal rules will apply to this case in the same way as to other cases.

Feeling as I do on that subject, that I have no authority of that provision to bring in the county of McDowell into the proposed new State, I shall certainly go for letting her remain out. If I was free, it would afford me pleasure not only to embrace the county of McDowell, and a number of other counties besides the county of McDowell.

MR. HALL of Marion. I think we ought to determine one point before we progress with this discussion. To my mind it is very easily determined - and that is whether we are restricted in our action here by the ordinance to the limits proposed and suggested by the gentleman who has just taken his seat. If we have not the authority to go beyond the limits of the thirty-nine counties; if it be true that no other counties have complied with the requisition, and we are therefore bound within the limits of the thirty-nine counties - it is useless for us to be amending, preparing or doing anything, outside of that line. But it does occur to me, that my friend from Preston has lost sight of the true idea or otherwise I have not yet gotten sight of it. The question is, where, from whom, or what source do we derive our authority to act in the premises? From a convention that sat in Wheeling in June? That seems to be the idea of the gentleman from Preston. I have no such idea. I believe no such thing. I repudiate that idea. Now, if he is right, we perhaps have no right to go further. But I maintain we are the people themselves - and I want to know where there was a convention that ever assembled heretofore that had the power to restrict us? We are the highest authority - the people themselves. That is the legal contemplation of the position of a convention of the people. Now, sir, we do not derive our authority from that convention. It did recommend that this Convention should be called and the people have acted in the recommendation. Now that convention is here with power unlimited, as suggested by the gentleman from Wood. There is no power to limit our action on this subject. The people have sent us here to act on this matter, and I care not what regulations and restrictions have been sought to be thrown around us; they are as naught. I think I cannot be wrong in this thing. I think that this error arises out of the idea of from whence we derive our authority, and that we ought to determine that question at once.

MR. DILLE. Will the gentleman permit me to ask him one question: are the people of the county of McDowell represented?

MR. HALL of Marion. Well, I believe not. At all events we propose to act with reference to counties that are not represented here; and as suggested by my friend from Wood, they are not represented here because as we have reason to believe, of circumstances beyond their control preventing them.

Now, what do we propose to do? We propose that our action here shall be submitted to the people first and foremost.

When we get through here it is to be submitted to the people; and when they act upon it, although the county of McDowell shall never have heard of this Convention and we send them our action and she adopts our Constitution and says she will go along with us, who has any right to complain or who is injured? So that it is only a proposition we are sending down there. Well, we do say this, however, that we may take in an unwilling county.

Well, sir, I am in favor of that thing. I am for "coercion" in that respect; and I have been opposed to that old line; and I do trust in this Convention we shall get a different line. I want that we have a line with natural boundaries; and if any county is in the boundary that ought to be included, however unwilling that county may be, I shall insist on applying the rule that the necessity of the many shall and must prevail against even the will of a county.

The gentleman from Harrison moves to strike out in this way with a view to modify and include part of the county. Well, he is driving at an idea that is a kind of a pet idea with me, of getting some kind of a natural boundary - a straight line; but I really have not looked to this matter enough about it to undertake any argument except as to the mere question of right. I think there can be no doubt on that question. If we have not the right we ought to know it now.

MR. STUART of Doddridge. I desire to call the attention of the Convention a few moments. It does seem to me, sir, this argument is taking a very strange course. The proposition is simply to mature this resolution in order to suit the views of gentlemen, and I do not see why it is that we go into the argument on general principles as to whether this Convention has a right to include other counties, because the same identical question will come up after we pass from this motion. The only question before this body is, is it proper and right to strike out McDowell from this class of counties we propose to take in?

MR. HALL of Marion. Would it not be better to determine now, first, whether we have any right to alter the boundary fixed by the former convention?

MR. STUART of Doddridge. That question is not before the Convention at all; but the question is, will we strike this county out from the class of counties it is proposed to take in.

MR. VAN WINKLE. I would suggest that if this argument must come up, it may as well progress now, since we have had the half of it; and it will rather save than consume time. Gentlemen will perhaps feel freer to vote.

MR. STUART of Doddridge. Then this question will be decided on a false issue. Many members will vote to strike out McDowell who will not vote to strike out others. I understand, my friend from Harrison, if the resolution is amended, will perhaps be in favor of it. Now, gentlemen, it is always permitted in legislative bodies for the friends of a bill to amend it and make it as acceptable as possible before the vote is taken on its final acceptance or rejection. The first question here is, shall we amend this resolution, and then the question will arise as to our power over this matter. I am inclined to let the question come upon the other portion of the report as it undoubtedly will; but I will say to the gentleman from Harrison who made this motion, that I am unacquainted with the natural boundaries in McDowell - I presume he is more familiar with it - but, I am willing to vote for his amendment in order that the section may be more perfected, with a view of voting for the natural boundaries as we may find them to be.

MR. DILLE. That this question may be tested, I propose to amend the proposition of the gentleman from Harrison by embracing in his motion to strike out, in addition to the word "McDowell", the words: "Mercer, Monroe, Greenbrier and Pocahontas." I do this for the purpose of ascertaining the sense of the Convention in reference to the whole question.

MR. HARRISON. Before the vote is taken, I hope the gentleman will withdraw his amendment; because it might affect - unless the Convention should be decidedly of opinion that we have no right whatever to add anything to the thirty-nine counties represented here - it would affect the question of fixing the boundary by natural objects such as rivers and mountains, as I propose to accomplish by another amendment hereafter to this resolution.

THE PRESIDENT. If the amendment of the gentleman from Preston fails, the vote will then be taken on the amendment of the gentleman from Harrison.

MR. HARRISON. It would be much better to let the question raised by the amendment of the gentleman from Preston arise on the main question, when we get it in such a form as would be satisfactory to the Convention, and argue that question then and dispose of it. I suppose the object of the gentleman is to act on that question now.

MR. LAMB. I have no objection at all to see this discussion proceed upon a question that will necessarily come before this Convention directly, whether it be involved as a motion precisely before the house or not; but when we come to vote upon the particular motion at hand, let us understand what we are voting upon and how far it may involve the principle which has been under discussion.

We are simply now engaged in perfecting a resolution in order to be presented for the adoption or rejection of this Convention. Whatever may be the disposition of the particular motion which is now before the Convention, it does not conclude the question at all whether the Convention shall admit or reject these counties; of whether they have authority to admit or reject them. It is certainly the natural course of things that the resolution should be put in as perfect a shape as possible before the question comes up finally; shall it be adopted? It is an act of courtesy always shown to committees that report resolutions or to members that offer them; and when the question does come up not upon the simple shape in which the resolution shall be presented to the Convention, but shall the Convention adopt or reject the resolution as it has been

modified, then the issue of the whole question is necessarily involved and comes up direct. If the amendment of the gentleman from Preston is rejected, if the Convention should refuse to strike out all these counties, why immediately afterwards, then, the same question he has been discussing comes right before the Convention again, is again proposed to the Convention: shall we adopt the resolution that proposes to include these counties in the new State? And that necessarily involves the question of power. His motion therefore, is, I take it, not a proper one. Let us act on this resolution in the best shape we can, and then when we come to adopt, we necessarily decide the main question.

But I have no objection - this discussion must come up anyhow, and we have got partly through with it - I have no objection that the discussion should proceed on the main principle; but, when we come to vote, let us recollect that that main principle that has been discussed is not yet involved in the question.

THE PRESIDENT. The Chair is of opinion that it might indirectly or pretty fully involve that question; yet the Chair is decidedly of opinion that custom and the usage of all deliberative bodies does allow the party bringing forward a measure to perfect it before it is assailed. But he does not think there could be any doubt of the propriety of arguing the right of the Convention to extend the boundary over these counties on the motion to strike all connected with the entire section. It would, however, facilitate business very much if the friends of the measure were permitted to perfect their resolution before it is argued.

MR. DILLE. In making the amendment I proposed to the Convention it was not intended on my part at least, to reflect in any way upon the Committee. Feeling as I did upon an examination of this provision in the ordinance of the former convention that we had no authority to embrace these counties, I supposed we might more readily test this question and attain the object desired much sooner by means of the motion I have submitted. Personally I might say to the Convention that I regret very much that this Convention is hampered as I conceive it to be - I may be mistaken in this, and hope on investigation I may be - hampered with the provisions of this third section. Hence the object I had in view in raising the question, that I might the better express my sentiments upon the motion of the gentleman from Harrison. I do not wish to do anything that will affect the action of this Convention, or produce confusion by any motion on my part; and if it be the desire of the Convention that I shall withdraw the amendment, of course, I will do so; and in the meantime I shall not feel at liberty to vote until the action of the Convention be taken upon that proposition, or in other words. I shall vote for striking out until I am satisfied this Convention has the power to embrace other and additional counties.

MR. BROWN of Kanawha. I hope then, if it is the purpose of the gentleman who has just taken his seat to raise the question of the power of the Convention to embrace all these counties, that he will not withdraw his motion, but that we will settle it at once. For if, as he has announced his purpose to, he raise the same objection upon every county, one at a time, we shall be here until the end of the week, discussing the identical same question over and over every time; because it is perfectly clear if this Convention shall decide that we have no power to include any county not already included by the ordinance of August that then it would be better to settle the question by one vote for all than vote on the same question so many times. I should have made that motion myself; but as I am not a friend to striking out, I could not do it. If the question is to be met, let us meet it at once. It must be decided by the Convention. I think it has already been decided in changing the name, and in admitting the members from Wyoming and Fayette, none of whom were elected in accordance with the provisions of the ordinance. I think it is clear that the Convention cannot possibly complete its labors so as to submit their result to the people by the 26th inst.; so that you are hampered by that ordinance in every manner; and if you attempt a strict conformity to the very letter of its provisions, we had better go home, return ourselves to the people and tell them to send others in our places.

It seems to me we have come here to effect a great end. The people have determined for themselves that there shall be a new State, and here we are providing the Constitution and boundary of it. If it be necessary, when you have determined on the principle and question of a new State - that a certain boundary is essential to the existence and prosperity of that State, can there be any doubt of the right of the people of that State and the representatives here to march up to the question and establish their boundary on that limit? I understand, sir, that one of the fundamental principles laid down by Vattel in the laws of nations, is that wherever a territory becomes essential to the prosperity and safety of a State, it may purchase it if it can, and if it cannot, it may take it. It was the identical same principle asserted by our government in the case of Louisiana when it was a French territory. Our people said, the mouth of the Mississippi must be ours; it is essential to our prosperity and safety; and that it should be in the hands of a foreign government cannot be tolerated. The government must purchase it, and if it failed in that it must take it by force; and if it did not the people would rise in their might and take it in spite of the Federal power. The necessities of the case would have justified the government in doing it, and its right would have been maintained on the principle of the law of nations, had France refused, wilfully refused, to have sold it.

I think then when we look at the fundamental principles that must govern our action - when we look to the future prosperity of the State, we will fix a boundary permanent and durable, that will be a barrier against evils from other quarters - that will insure peace and prosperity to this people; for that is what we are here now to do, and although the feeling may have been very general to have a division of the State, yet I am not sure we would have been here but for this, and because we had no security for it in the present organization of the State.

It is necessary and essential therefore that this boundary shall be determined; and in determining it, as wise men I think we should plant it on the eternal mountains, and the waters that flow westward must mark the limits of this State or we have no State at all. It is with these views I feel I am unable to vote for, or make the motion, as my friend has done, to strike out these counties. I desire the question to come up at once. I think the trammels must be shaken from our hands, if any man feels trammelled, when we grapple with this question.

MR. STUART of Doddridge. I would say to my friend from Harrison that by voting down the amendment to the amendment, then, he can go on and perfect the resolution to his satisfaction. I desire that to be distinctly understood; and I hope the amendment to the amendment will be voted down, in order that the friends of this measure may have the opportunity of perfecting it as far as possible to suit the views and convenience of this body.

MR. LAMB. Mr. President -

MR. STUART of Doddridge. I desire that the Convention shall understand - that the friends of the amendment to the amendment should understand the position we now occupy. I look upon this measure, Mr. President, as one affecting the interests of our State most vitally, and one upon which its future course depends. I refused to argue this question until it was raised, but now the amendment of the gentleman from Preston does legitimately raise it. I had hoped it would be raised in a different form. As I understand some of the arguments of the gentlemen here, one of the reasons why they will vote against admitting these counties is that they are counties inhabited by secessionists. Well, sir, if that be the case and if that is to be the reason that is to influence our action here, we ought by all means in the world include them in order to get rid of them, because if they are secessionists, the argument is that they will always remain so, and there they are right in our way, and they being secessionists have no claim to consideration of the government and we are at perfect liberty to do as we please with them.

Now, sir, we want the great natural boundaries indicated by my friend from Kanawha, and the natural defenses the God of nature has given us. Look at our situation. If we get into this trouble and these secessionists are to remain there, how can we defend ourselves from them? They are right here amongst us, west of the Alleghany Mountains. If we have any defense in the world, it is the top of the Alleghanies; and the proposed boundary includes that territory which will enable us to secure ourselves against these secessionists which gentlemen appear so much afraid of.

Another reason is that these people have not brought themselves within the purview of the ordinance of last August; that they have not voted and expressed their will and pleasure to be received into the new State. Now I understand the spirit and intention of that ordinance was that the people should have the opportunity to vote. It presupposed the fact that they would have the privilege of doing so. They have not had it; and yet you want to cut yourself loose from them and deny yourself the great natural boundary, simply because they have been deprived of the privilege of expressing their sentiments. I have not a doubt, Mr. President, in my mind, that if the State is to be divided, if we are to have a West Virginia, and the question is to be submitted to these people whether they will go east or go west, that there will be hardly a dissenting voice among them, because their interests are identified with ours in every respect. Their trade and commerce is with us. They are deprived of the privilege of having community almost with the eastern portion of the State. Mountains prevent them from associating and trading with eastern Virginia; and the very reasons we assign now, and one of the great reasons that we will offer to the Congress of the United States why we should have a new State out of a part of the State of Virginia, is, sir, that our natural location and circumstances and our interests are such that they require it; and yet, sir, if we refuse to receive these counties, it will cut us right off from citizens of western Virginia whose interests and situation are identical with our own.

I hope, Mr. President, that the amendment of the gentleman from Preston will be voted down, and then that the amendment of the gentleman from Harrison will come, and that if he desires to perfect this resolution he may have an opportunity to do so.

MR. WILLEY. This is a very grave question. If the Convention is ready for a vote, I shall not interpose any objection myself, whilst I say my mind is perplexed somewhat as to the course of duty. I do not propose myself to discuss the matter tonight. I am physically unable to do it. I shall not ask that the consideration of the resolution be postponed if the Convention is ready for the question.

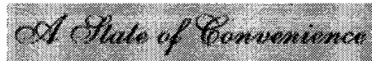
MR. DERING. I move the Convention adjourn.

The motion was agreed to, and the Convention adjourned.

<u>November 26, 1861</u>	<u>January 8, 1862</u>	<u>February 3, 1862</u>
<u>November 27, 1861</u>	<u>January 9, 1862</u>	<u>February 4, 1862</u>
<u>November 29, 1861</u>	<u>January 10, 1862</u>	<u>February 5, 1862</u>
<u>November 30, 1861</u>	<u>January 11, 1862</u>	<u>February 6, 1862</u>
<u>December 2, 1861</u>	<u>January 13, 1862</u>	<u>February 7, 1862</u>
<u>December 3, 1861</u>	<u>January 14, 1862</u>	<u>February 8, 1862</u>
<u>December 4, 1861</u>	<u>January 15, 1862</u>	<u>February 10, 1862</u>
<u>December 5, 1861</u>	<u>January 16, 1862</u>	<u>February 11, 1862</u>
<u>December 6, 1861</u>	<u>January 17, 1862</u>	<u>February 12, 1862</u>
<u>December 7, 1861</u>	<u>January 18, 1862</u>	<u>February 13, 1862</u>
<u>December 9, 1861</u>	<u>January 20, 1862</u>	<u>February 14, 1862</u>
<u>December 10, 1861</u>	<u>January 21, 1862</u>	<u>February 15, 1862</u>
<u>December 11, 1861</u>	<u>January 22, 1862</u>	<u>February 17, 1862</u>
<u>December 12, 1861</u>	<u>January 23, 1862</u>	<u>February 18, 1862</u>
<u>December 13, 1861</u>	<u>January 24, 1862</u>	<u>February 12, 1863</u>

<u>December 14, 1861</u>	<u>January 25, 1862</u>	<u>February 13, 1863</u>
<u>December 16, 1861</u>	<u>January 27, 1862</u>	<u>February 14, 1863</u>
<u>December 17, 1861</u>	<u>January 28, 1862</u>	<u>February 16, 1863</u>
<u>December 18, 1861</u>	<u>January 29, 1862</u>	<u>February 17, 1863</u>
<u>December 19, 1861</u>	<u>January 30, 1862</u>	<u>February 18, 1863</u>
<u>December 20, 1861</u>	<u>January 31, 1862</u>	<u>February 19, 1863</u>
<u>January 7, 1862</u>	<u>February 1, 1862</u>	<u>February 20, 1863</u>

[Chapter Eleven: First Constitutional Convention of West Virginia](#)



[West Virginia Archives and History](#)

West Virginia Division of Culture and History
Copyright 2010. All Rights Reserved.
[Privacy Notice](#)

Respondent Thompson
Exhibit No. 13

WEST VIRGINIA DIVISION OF CULTURE AND HISTORY

WV
A&H

West Virginia Archives & History



A State of Convenience

THE CREATION of WEST VIRGINIA

An On-Line Exhibit
West Virginia Archives and History

Debates and Proceedings of the First Constitutional Convention of West Virginia

December 13, 1861

The Convention was opened with prayer by the Rev. Henry C. Sanford, of the M. E. Church.

The minutes of the preceding day were read.

MR. VAN WINKLE. I notice it is stated on the minutes that the gentleman from Monongalia had leave of absence for eight or ten days. That is rather indefinite. I think it had better be made for ten days. It had better be stated ten days.

The Secretary made the correction suggested.

MR. CALDWELL. I hold in my hand a proposition which I desire to offer for the consideration of the Convention, to be taken up hereafter by the Convention. It would necessarily, I think, sir, form a part of the business of the Committee on the Fundamental Provisions. I merely ask that it be laid on the table and printed.

The proposition was read as follows:

No debt whatever shall be contracted by, or on behalf of the State, except to meet casual deficits or failures in revenues, or for expenses not otherwise provided for, but such- debt or debts, direct and contingent, singly or in the aggregate, shall not at any time exceed \$3,000,000.

In addition to the above limited power, the State may contract debts to repel invasion, suppress insurrection, defend the State in war, or to pay the State's equitable proportion of the public debt of Virginia existing on the first day of January, 1861.

The general assembly shall never on behalf of the State guarantee or assume the debts of any county, city or town within this State, or any corporation whatever - nor shall the credit of the State be in any manner given, or loaned to, or in aid of any individual, association or corporation whatever - nor shall the State become a joint owner or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever.

MR. VAN WINKLE. That would go, I apprehend, to the Committee on Taxation and Finance.

First Constitutional Convention of West Virginia

MR. CALDWELL. I have no objections, sir.

The proposition was accordingly referred to the Committee on Taxation and Finance.

MR. STEVENSON of Wood. I do not see the chairman of the Committee on Education present, yet I would just take leave to present to the Convention - or rather through them to the Committee on Education - a communication from Professor Martin, of Allegheny College, at Meadville, on the subject of education. I do not ask it to be printed. It is already published in the public journals; but I would just call the attention of the members to the fact that it may be difficult to obtain the same communication printed hereafter, and it will be a very important document to be referred to even after this Convention have adjourned. I would suggest to them the propriety of obtaining it in the paper. I do not want it printed. I merely wish to call the attention of the committee and the Convention to it.

MR. STUART of Doddridge. Mr. President: I have a resolution to offer this morning in regard to the boundary question, sir; and I do it representing certain parties from Loudoun and Fairfax who insist that their claims shall be brought before this Convention. The following resolution is offered as an amendment to the report of the Committee on Boundaries. I ask for its adoption.

RESOLVED, That the counties of Loudoun and Fairfax shall also be included in and constitute a part of the State of West Virginia: *Provided*, a majority of the votes cast in the said counties, on the third Thursday of April, in the year 1862, be in favor of the new State, and also in favor of the Constitution that may then be submitted to them, by this Convention: and *provided*, further, that the said counties of Loudoun and Fairfax are not to become a part of the new State except the district composed of Jefferson, Berkeley, Morgan, Hampshire, Hardy, Pendleton and Frederick, become a part of the proposed State.

The President stated the question to be on the adoption of the amendment to the report of the Committee on Boundary.

MR. STUART. I would merely say, not to enter into an argument, that there are a good many persons now in our city from the county of Fairfax, and the county of Fairfax is represented in our legislature. They are exceedingly anxious that this thing should be submitted to their people. They say they want to come, and that there is no less than 500 citizens in the county of Fairfax driven into the city of Washington. If we have a new State they are exceedingly anxious, and they want an opportunity of expressing it, to go with us. I hope it will be the pleasure of this Convention to give them the opportunity. We do not propose to take the county unless the district composed of Jefferson, Berkeley, Morgan, Hampshire, Hardy, Pendleton and Frederick be received as part of the State, because then they would be disintegrated from the State of West Virginia. But if this district comes in, then if the counties of Fairfax and Loudoun vote for the adoption of the Constitution to be submitted to them, then we have a continuous boundary which includes the Capital of the United States, or within a stone's throw of it; while if Fairfax county is included in the old State of Virginia, there is within a stone's throw of the Capital - and I presume it will not be looking with any idea of the contingency that a Southern Confederacy will ever prevail; but I say that we should always look to the contingencies that may possibly arise. I do not say that there is even a probability of it, but such a thing might happen, and if it does, why then, sir, the enemy would be within gunshot of our Capital. And I think it would be prudent to include those two counties for our self-protection and for the protection of our Capital. My attention has been called to the City of Alexandria. I have no doubt in the world but what that would be included in the boundaries of the District of Columbia. I understand that it is moved now, that congress and government down there wants it receded again - want it back; and I have no doubt the legislature of Virginia will grant that district the City of Alexandria including the old boundaries of the District of Columbia. And consequently, it is not necessary, it seems to me, for us to take any notice of that at present. I believe the Convention understands all about this matter, the reasons that influence the motion. It is done, I say, at the instance of my friends and of your friends who are representing you here in the state legislature, who are doing everything they can to sustain you, who are voting and will vote to give their consent to the formation of the new State; and they are friends, too, in every particular and in every instance; and they want it done for the relief of, they say, from 500 to 1000 fugitives driven from their homes. And if they ever are permitted to go back, there will be such legislation towards them by eastern Virginia that they cannot remain at their homes unless they be included.

MR. DERING. Mr. President: I shall be constrained to vote against the amendment to the report. It seems to me, sir, that the gentleman from Doddridge is upon a roving expedition to include all the territory around about us. Yet, sir, as I said in the commencement of the discussion on this boundary question, I am opposed to the annexation of a single foot of territory except what is absolutely necessary, as I deem, to our prosperity. Sir, we took in five counties the other day arbitrarily, *volens volens*, as the gentleman from Marion says, and included them in our territory. We have gone on from that step and we have taken in five other counties that border on the Baltimore and Ohio Railroad. And now, sir, encouraged by the advances we are making for the annexation of territory, the gentleman from Doddridge asks us to go right down into the very heart of old Virginia and take Fairfax and Loudoun.

Now, Mr. President, this asking for more territory is only increasing, in my estimation, our complications - only tending to increase our embarrassments and to delay the formation, as I believe, of a new State. That will be the effect of it, sir. It seems to me, sir, that it becomes this Convention to pause before they take in these counties; and it seems to me, sir, that the gentleman by asking for these additional counties is endangering, in my opinion, the passage of the whole report. Sir, there must be some place at which we will have to stop; there must be some pause in this addition of territory. Sir, it seems to me that we should not include the counties of Loudoun and Fairfax. Sir, the gentleman wants this Convention to take Mannassas - for I believe it is in the county of Fairfax. I do not presume he wants to embarrass the inauguration of a new State but it seems to me the inevitable effect of including these two counties tends only to embarrassment and delay.

All the information we have, sir, goes to prove that it will be difficult to get our new State through Congress and every complication of this kind only increases the embarrassment and delay. Sir, I want nothing to stand in the way of our onward progress towards a new State, and I shall oppose every amendment that will have that effect while, sir, I have the honor of having a seat in this Convention.

MR. BROWN of Kanawha. Mr. President: the motion to include the counties of Loudoun and Fairfax appeals very strongly to my prejudices, and I confess a very strong desire to accommodate those people, and extend to them the right-hand of fellowship; but at the same time it seems to me it is a wide departure from the propriety of the case and that it ought not to be done. We come here to make West Virginia a new State. We profess to be the people of West Virginia. We have assumed the name of West Virginia, and the eastern border of that territory ever has been the Blue Ridge. But having marched up to it in a hypothetical case, to extend our limits and cross beyond it and pillage the territory of the old Dominion - and that too that territory which is about as old as almost any in the limits of the state - a little behind Jamestown - is going a little too far and it will subject us to the condemnation of being a little too grasping.

There is another consideration that moves me. We have undertaken to restore the Government of Virginia - the Loyal Government. If we succeed in the establishment of the new State, of course that Loyal Government must immediately upon the recognition of the new State terminate within its boundaries. The Loyal Government of Virginia, however, is still supposed to be in existence; and if there is any restoration of the Loyal Government for the security and protection of the Loyal men of the State it must continue to exist and extend itself over the residue of the State. Otherwise all the Union men are left at the mercy of a government as hostile against them as is possible. Take away Fairfax and Loudoun and you have left that Loyal Government with not one foot of the territory to stand upon in its dominion. You must leave that territory for it to stand upon as a base of operations, in order that under the influence of the general government it may be restored to the rightful control of the entire soil of the state south of it. If we do not do that, we have the Union men all over east Virginia, who are now silent as the grave, who are beneath the tread of tyranny, who are looking wishfully to the progress of the Union cause and for its speedy coming to their relief - without a solitary ray of hope, and they have no other alternative but to yield at once and take part in that rebellious government that is seeking to destroy us all. It seems to me that considerations of regard and fellowship for the Union men there forbid us trampling on one foot of the territory east of the Blue Ridge; and with this view I must vote against the amendment.

MR. STUART of Doddridge. Just one moment, sir, in reply to my friend from Kanawha. He seems to think that we ought to leave the counties of Loudoun and Fairfax as a kind of Union nucleus around which the old state is to be reorganized and brought into the Union. Now, sir, I do not understand that there is a Union man permitted to stand upon the soil of Fairfax and Loudoun; and if he wants a nucleus around which such a government can be gotten up, I understand that Accomac and Northampton are the only counties in the possession of Union men. I sometime since took leave of my friend from Kanawha. But I want to point out to him just a minute further an inconsistency, and that is this: you know how strenuously he was in favor of including Randolph, Mercer, Monroe and Greenbrier from the fact that it was necessary for our protection - necessary for our defense - because it would give us a natural defense that we did not have. Now, the same reasoning, if the gentleman will only look at it, at least as I view it - the very same reasoning that influenced him to urge upon this Convention the adoption of the resolution including those counties, would carry him to the conclusion that we ought to include the counties of Loudoun and Fairfax, because they, sir, are equally necessary for the protection of our Federal Government. Equally!

But I did not intend to enter into an argument but to refer to one remark made by the gentleman from Monongalia (Mr. Dering) and that is that it militates against our chances of getting this new State. Now, look, Mr. President! Remember that there is now 500 men of the county of Fairfax - or maybe 1000 - in the city of Washington and who are appealing to you to come into the new State. Those men have influence, and they are right around the Cabinet at Washington and the Congress; and if you say they shall not have the opportunity to come, they will band together and effect more against our interest than including possibly effects. Now, reflect upon this. Now, mind what I tell you, if you don't see these Union men - fighting for our cause, standing in our legislature to-day - if it don't band those men together against our interest and prospects of getting a new State.

The President stated the question to be on the adoption of the amendment.

MR. PARKER. Mr. President: One moment, no one feels more gratified than I do, Mr. President, that our friends there should recollect and even wish to join us. It has given me great pleasure. What little I could do, if I could do it consistently, I would be glad to do in their behalf. But from the reasons stated by the gentlemen already, it strikes me that I cannot. There is this view, which seems to me important and which we ought to understand fully: whatever territory we take in, of course the State assumes the expenditures for. That is a point, it seems to me that should not be lost sight of, particularly if the policy of the new government is to be to divorce the State from the work of internal improvements. West of the Alleghanies we have very few internal improvements. The state has invested comparatively but little. The internal improvements in the west of the Alleghanies, in the main, are now to be built up. If the new State is to stop contributing to any part, why then of course, it is to devolve on the people of each section. It has got to be done by your children without any aid of the State. Well now, if we take in any sections where the old State of Virginia have largely expended three-fifths in building up all the roads, railroads and the necessary improvements and conveniences which make a country, why what is to be the result? Why the new State has got to pay three-fifths. All living west of Alleghany, which in fact have comparatively no railroads compared with that section, have got to be taxed to pay for these improvements. They do not want any more. We have got to go in in fact and help pay up what they have cost and then we have got to go to work and build up our own, and if the divorce takes place between internal improvements and the State, they are not to help us to contribute one dollar towards it. Whenever we get a railroad here we have got to put our hands into our pockets and get some capital to go in and do it.

The result is we pay the improvements in their country and they reciprocate to us nothing. Now I find the Alexandria, Loudoun and Hampshire road is entirely within these two counties. It runs from Alexandria to Leesburg. The State has expended in stock \$841,748; and then the loan besides of \$400,000, I think. No, there

is no loan. \$841,741 is the state stock subscribed. Now, the other road is the Orange and Alexandria. That goes out towards Manassas Gap, as I understand. Well, that has been \$862,316.08 is the stock. The loan to that road is \$400,000. Eight and four is twelve. Well, that road is not all in Fairfax. That goes on to Manassas Gap, and I think on to Richmond. About \$70,000 a mile is the general estimate of the cost of these railroads. And whatever there is in Fairfax that cost would fall upon us.

MR. BROWN of Kanawha. My friend from Doddridge seems to think that there is some inconsistency in the course I have pursued arising out of the fact, I suppose, that he and I voted together sometimes and sometimes we have not. I have endeavored, sir, in the support of propositions before the house, and in opposition to them, to pursue a course that I deemed for the best interests of the State and my constituents, and I have pursued the idea of securing the best boundary that I thought possible to the safety and prosperity and permanency of this new State we are forming. I have not succeeded in getting it all precisely as I wanted it. But one policy has been to enable us to have a boundary that really was defensible. Whether in pursuing that idea I have been inconsistent or not is a question I must submit to my constituents and not to the gentleman from Doddridge.

In reply to the argument of the gentleman as to this boundary that is now proposed to be taken, it does seem to me it is at war with all the doctrines and ideas we have both been urging upon this Convention for fixing a mountain barrier between us and what may be, or would be, a hostile state or republic. If we are to take the territory proposed in these two counties, we are departing from that great principle of mountain barriers nature has constructed for the defense of those on either side, and leaving nothing but an air-line between two populous peoples - a line, in a military point of view, that is almost indefensible. Why, the whole State, men, women and children, that we shall form are scarcely equal in numbers to the armies now on that very territory to keep back those that are seeking to over run it. It seems to me that it is the weakest point - that it ruptures every argument he has urged in behalf of the territory we have heretofore included. If we are to undertake the defense of the government of the United States, then indeed we shoulder a Herculean task. I have not been actuated in my course by any such motives. My object has been to obtain a state border that was the most easy of defense and would render us the most secure. While we would expect in every difficulty the government of the United States would be with us to aid us in maintaining that boundary, yet to assume for ourselves the high position of defending the Government of the United States and throwing ourselves by a border between it and the Confederate forces - if such a thing shall be hereafter established - had not entered my mind before. I had not supposed before the gentleman announced it that he had even dreamed of such a proposition.

MR. DERING. I was unfortunately led into an error in supposing that Manassas was in Fairfax. My friend from Marion who had the map before him told me it lay in Fairfax. It lies in Prince William.

The argument of the gentleman from Doddridge is that there are 500 Union men in Washington who desire to come in. Now, sir, I sympathize with them as much as the gentleman from Doddridge. I sympathize with them deeply; but if our sympathies for Union men are to control us in making a boundary for the new State, where shall we stop? There are Union men, I have no doubt, in every county of the whole State; and many of them in many of those counties would desire to come with us and help form this new State. Therefore, sir, we must not be controlled by our sympathies but our interests and what is due to the new State. But yesterday, sir, they wanted the Blue Ridge for the line. Now they are for traveling on, and after while, sir, they will give us the whole State of Virginia. Let us not take these pills in broken doses but let the gentleman come up with all the territory he wants at once, and let us know what we are to depend upon in that respect.

MR. HALL of Marion. I desire to add but a word. I confess, sir, I have been an advocate for natural boundaries and still am. There are many considerations that lead me really to desire to include these counties; and many reasons - good reasons, so far as my judgment goes - why we should not include them. There is one fact that I deem a matter of importance to us. If we had a natural boundary between these counties and the counties from which we propose to dis sever them, it would be a matter of the very first importance that these counties should be included in and made part of our State. It is the nearest point at which we can reach ocean navigation. The water is deeper in that channel by considerable than it is at Baltimore; and it is much nearer to us. We can reach it through these counties more readily than at any other point. It does occur to me that that would be a consideration that would weigh - ought to weigh - considerable in the scale of importance. I have no doubt at all in my mind that the people of those counties desire to come in, that if they had an opportunity to do so they would vote to be part of our new State. I know that was the sentiment expressed by every one with whom I met during the conflict at Richmond. They were identified with us in our every movement; they stood by us on the question of Union; and were really with us in our movements in looking to the protection of western interests, and they have always been identified with us in interest and in feeling. But whilst I would take some persons in who did not want in with us, I would be bound for the same reason to leave out, under some circumstances, those who wished to go with us. I must confess, sir, that I can see nothing in the argument of my friend from Cabell with reference to the debt we would incur by taking these within our boundary. There are railroads built there at considerable expense, but at the same time they are worth all they cost, and more, too. But suppose we are preparing to divorce ourselves, according to a resolution offered for the consideration of the Convention this morning, it ought not to influence us in our action because the railroad would be of some good to us if we are to take these counties. The railroad that leads from Leesburg, if extended - which, of course, it would be necessary that it should be - would be an improvement that all the people of the entire State would demand and require should be completed; and it would be one of the most important improvements for us - not for them locally, but for us - as forming a line and channel by which we could connect with the deep channel of water there - the shortest and most direct and best point at which we could reach it.

These are considerations. I confess, whilst I have been termed a fillibuster, that there are several reasons why I do not so much favor this proposition, though I feel very much inclined to extend to them the hand of fellowship; and at the same time I am very much inclined to think it will not be for any good at present. I have no objection to including Mannassas Junction. It is about as short a way as we can take to capture Beauregard and his troops, and I would be willing to surround them with our line. I do not see very well how we can include these two counties unless we take Clarke in order to make a straight line, because Clarke will lie right between one of these and the ones we have already proposed to take, and it would stand out, as some one remarked, in reference to another, like a wart, an excrescence of the old State, protruding itself right into our territory. However, I shall not move to amend. But these are considerations that are entitled to weight and consideration here. The very fact that by this line of communication with that deep channel of water will give us an opportunity to build up there that that we now have in the city of Baltimore whenever anything may occur that would make it to our interest or make it necessary that we should have a port of our own and be independent. It would be to our interest at any time. That, it occurs to me, is an idea and consideration that should influence us here.

The question on the amendment proposed by Mr. Stuart of Doddridge was taken by ayes and noes, and the amendment was rejected.

MR. SHEETS. I have a resolution here which I desire to offer. It was read by the Secretary as follows:

"RESOLVED, That, inasmuch as the counties of Hampshire and Hardy have complied with the provisions of the June Convention, they be included in the State of West Virginia."

MR. VAN WINKLE. Is that offered as an amendment to the report, sir? He had better just make his motion and withdraw that part of the resolution which states the reason. It is not in form to go into the report as an amendment. It begins with a preamble.

MR. SHEETS. I will state the reason that induces me to offer the resolution. The ordinance calling this Convention provided that a vote should be held in those counties and the sense of the people should be taken as to whether they were in favor of forming part of the proposed new State or not - those two counties, Hampshire and Hardy. The question was submitted to our people. The vote taken was a small one; but a majority of the votes cast at that election - a majority of the voters who cast their votes at that election, were in favor of connection with this State. According to the resolution passed yesterday, we are to come upon the same footing as those who have not taken any vote at all - Morgan, Berkeley, etc. In the counties of Hardy and Hampshire we have taken a vote, and we have declared by that vote that we are in favor of coming into the new State. I consider, sir, that I am not here to represent my own feelings in regard to that matter. I am here representing the wishes of my constituents - those who sent me here; and in justice to those people I consider it my duty to try to have those two counties added to the list of the 44 including the five we annexed the other day; and with this view I offer the resolution that those two counties may be included in the list of the 44, without submitting the question to them again as to whether they are in favor of forming part of the new State or not.

THE PRESIDENT. Will the gentleman accept the amendment suggested by the gentleman from Wood?

MR. VAN WINKLE. I do not suggest any amendment. I said this resolution was not in form to be acted on. If the gentleman wants to amend the report, he himself will have to put his amendment in shape to be acted on. If he wants to offer an independent resolution he must reserve it until the report is disposed of.

Mr. Sheets modified his resolution, which was again read by the Secretary as follows:

"RESOLVED, That the counties of Hampshire and Hardy be included in the State of West Virginia."

MR. DERING. If I understand the gentleman, his motion now is to amend the report?

MR. SHEETS. That was my object - to offer it as an amendment.

MR. VAN WINKLE. If he will make a motion to insert the resolution as the Clerk read it just now in the report, that will answer the purpose.

MR. SHEETS. I accept the suggestions, of course.

MR. CARSKADON. I am sorry to take issue with my colleague on this subject; but I consider it my duty and shall not shrink from it. I do not wish to occupy the attention of this body, being too young to assume to occupy much time before men of age and experience. Neither do I wish to reiterate the argument that I made when I first stated my position as a member from Hampshire. That was that I believed it to be the desire of my constituents, the Union men of Hampshire, to come into the new State, providing the adjoining counties did the same. I am of the same opinion yet; and I rise for the purpose of objecting to the amendment of the gentleman from Hampshire. If we are to be included at any rate without a chance, he will claim that it is not peremptory, that we have complied with the ordinance of August. I do not believe that met the approval of our voting population. A gentleman claimed the other day that that was not a fair expression of the views of the people of Hampshire, and so I think too. We have about 14 precincts in our county. We opened polls at two precincts, and there was less than sixty votes cast at the two precincts. At the precinct at which I was elected - for they did

not know at the other that I was a candidate - there was but 39 votes cast, I think. Seventeen were against the division of the state. And, why, will be naturally asked by the Convention. Because they were afraid of this very thing that the gentleman from Hampshire now proposes, that we would be included without a chance to go to the Blue Ridge. That, sir, was the expression of the people of that part of the county that voted for me; therefore, I feel it my duty to oppose the amendment. They were anxious to come in and have expressed a desire to come in the new State. They knew well their interest was with the new State, and so I know and believe it to be; but, sir, they knew it was to the interest of the State, and vastly to their interest, that the adjoining counties should be included, and they were not, if I understand them, willing to come into the new State unless some of the counties east of us came in. They objected to being the border, the tail end, of the new State. Because the Alleghany mountains is the natural line of the new State as proposed in the ordinance of August; because if you don't go further, you have no natural boundary. The people of Hampshire know this to be the fact; therefore they are extremely desirous that the counties beyond should come in. Therefore, I shall object to the amendment under the present circumstances; and if it seems to be the pleasure of the legislature, as I said on yesterday, to include us of Hampshire and Hardy, the circumstances are all before them and it will be for them to decide. Then we know all the circumstances after voting - the action of the adjoining counties; whether it would be wisdom to include the counties of Hampshire and Hardy without the others. And I hope it may be the pleasure of this Convention to give them a chance, to vote, as we voted at but two precincts out of about 14.

MR. SHEETS. Mr. President: I am very sorry, indeed, that my friend should oppose that resolution. I am sorry to have to differ with him on that question. The gentleman says that a majority of his constituents - or those who voted for him to come here as a member of this Convention were in favor of the county coming in and forming a part of the new State if we also include the counties lying East of us. Now, I call upon the gentleman to produce

the evidence that there were any such votes cast in the county of Hampshire. The question was . . .

MR. CARSKADON. I can do it, Mr. President; but I think any such remarks out of order.

MR. SHEETS. I have, sir, before me the ordinance of August last, calling this Convention, and that ordinance provides that polls should be opened in the several counties therein named, and if the majority of the votes cast at the time was in favor of the division of the state and so reported on, that they should elect tickets to represent them in this Convention. My worthy colleague and myself are here representing that people. A majority of the votes cast in that county were in favor of the division of the state and according to that vote we are here to represent the county.

The gentleman alludes to there only being polls opened at two precincts in the county. It was not because there was no Union men in the other part of the county, but it was simply because the polls could not be opened on account of military hostilities. At the precinct at Piedmont there was but very few votes polled and but one against the division of the state; and the gentleman who cast that vote didn't vote for any delegate to go to this Convention - didn't vote to be represented in this Convention; and I hold that any man who cast a vote at that election unless he was in favor of the division of the state had no right to cast votes for delegates to come here to represent him in the Convention. If a majority of the county that cast her vote in October last said she was in favor of a division of the State, I can see no necessity for submitting the question again - the very same question they have once taken a vote upon. I hold we are justly entitled under the ordinance here, having complied with that ordinance, that we are a part of the proposed new State and that we should be included on the same terms as the other counties and the five that were added the other day.

MR. LAMB. Mr. President: it strikes me the whole matter is out of order. The 8th rule is that a question once determined must stand as the judgment of the Convention and shall not be again drawn into debate. Certainly if we did determine anything by the resolution that was adopted yesterday, it was the precise question here presented that Hampshire and Hardy should have an opportunity of coming in if they came in with these other counties; that they should be admitted as a whole. That was the resolution

we adopted yesterday. If the gentleman wants to get at this question it must be by a motion to reconsider that vote and bring up the whole subject again before the Convention. But without reference to any question and with no desire to tie any gentleman down to a strict observance of the rule, I will say that I am fully satisfied that this is the district, if it is to be annexed at all, should be annexed as a whole and not these two counties separately. I do not intend to argue that question again, for it has already been fully discussed and I think directly decided. But there is one question which is raised by the motion and to which I would direct the attention of the Convention. It is said that Hampshire and Hardy have voted under the ordinance of August 20th; that a majority of the votes cast were in favor of the new State; that they have elected delegates to this Convention; that having therefore fully complied with the conditions set forth in the ordinance, they are entitled to admission here. Mr. President, this is not the ordinance of August 20th. The ordinance of August 20th says that if these conditions are complied with, then this Convention may admit them. It doesn't say they shall have a right to be admitted; but the matter is then addressed to the power and discretion of this Convention, whether they shall be admitted or not. Look at the section of that ordinance. It doesn't say the Convention *shall*; it says the Convention *may*. That was right and proper. It was no slip of the pen. It was right and proper that the ordinance should be as it is. It was right and proper, and the circumstances under which the application is made shows the propriety of it. The ordinance spoke of the majority of the votes cast. A majority of the votes cast might be but a very small portion of the voters of the county; and therefore it was proper that although a majority of the votes cast on this question might be in favor of the new State, that the matter should be addressed to the discretion of this Convention and not made mandatory and imperative on them, in order that if the majority of the votes cast did not represent a substantial portion of the voters of the county, the Convention might say it is not proper upon that motion to admit the people of that county. It was proper for considerations that it should not be made imperative on this Convention - the very considerations which led the Convention yesterday to

decide that if we admitted these two counties, it was expedient that the neighboring counties should come along with them. There were in Hampshire county 16 votes against at Piedmont precinct and 179 votes at the other precinct in favor of the new State, amounting to 195. The voters of that county include two thousand, I have been told, but I cannot state it as a fact - it is merely what I have heard - that of the 179 votes which were cast at New Creek precinct 100 were cast by a company of soldiers stationed there.

MR. CARSKADON. Will the gentleman allow me to make an explanation? I was at New Creek during the whole two days' election. The polls, in consequence of Kelley's arriving there were kept open two days; and if I am not mistaken - of which I have now no doubt - but that I am correct in this assertion - there was not over 39 votes cast of citizens of that vicinity who had a right to vote for delegates for this Convention. The rest were soldiers.

MR. LAMB. Well, that is about the information that I had. Then, gentlemen, this question is addressed - even by the strictest construction that can be put upon the ordinance of August 20th - to your sound discretion; nothing in it imperative upon you. Have you such an indication of the sentiment of Hampshire county as enables you to say that they have come properly within that condition? Or if they have come properly in that condition, it is still for you to say, as you did say yesterday, according to your best judgment, whether it is proper that those counties should be admitted by themselves.

THE PRESIDENT. The gentleman from Ohio having raised the point of order...

MR. LAMB. I am not particular about the point of order.

THE PRESIDENT. Well, the Chair had some doubts himself about the propriety of the motion, but was disposed to give the gentleman from Hampshire and opportunity to test the opinion of the Convention, and now entertains strong doubts whether the vote ought not to be put on the amendment as offered or whether it would be proper to move a reconsideration.

MR. STUART of Doddridge. If I understand it, this question never has been submitted to this Convention, in reference to the admission of Hampshire and Hardy. There has been no resolution offered that has decided the sense of this Convention on this before and I admit that it is now raised by the gentleman from Hampshire. If any gentleman can call my attention to an opportunity to vote on that question, I stand corrected. I have not had the opportunity to give my vote that way. No question has ever brought it up in this form, to include Hardy and Hampshire peremptorily.

But while I am talking to the question of order, let me just remark that I am now undecided. I find the two gentlemen representing the county of Hampshire differing; and let me say to the gentleman from Hardy that my vote will be influenced by whatever his views are on this subject. It is the first time I have been undecided.

MR. DOLLY. Mr. President, I am here to represent Hardy, and my constituents wish to come into the new State. I was sent here to answer for them; and I would wish the vote to be taken according to the amendment.

MR. HERVEY. My recollection coincides with the recollection of the gentleman from Doddridge. The proposition to strike out certain counties - five or six - was before the Convention, leaving out Hampshire and Hardy . . .

MR. STUART of Doddridge. With the conditions attached.

MR. HERVEY. But the proposition now up never was before this Convention. In regard to the vote alluded to by the gentleman from Ohio, I do not see from the last clause of the 3rd section of the Ordinance of August 20th that the soldiers would be prohibited from voting. They are not prohibited. The vote in those counties stands upon a different footing from the vote to be taken in the other counties named. "If the said 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 new State, and shall elect delegates to the said Convention, at elections to be held at the time and in the manner herein provided for." Not confined to the votes of one county but to all the votes given. I do not think that that will prejudice. If we are going according to the law and testimony, let us stick to it. If they are not excluded they have a right to vote. However much I might doubt the propriety of their voting, still if they are not excluded, they have a right to vote under the ordinance.

MR. VAN WINKLE. I am very sorry to note that whenever we depart from the rules we are consuming time unnecessarily; and I know of no better way, sir, to economize time than to stick closely to the rules, and I do not believe any of the motions made are going to help it. The rules that govern this house are founded on the experience of centuries, and on a few days experience here it would be hardly wise to change them. I throw that out for general consideration. Now, sir, that this is strictly out of order, as the question has been stated here, I can make apparent to every member. This report was to be taken up and proceeded in section by section and then the whole question was to come up on the adoption of the whole report, when motions to strike out and insert would be in order. We passed from the section, sir, containing these two counties. The Convention had expressed itself not on this precise resolution but on what ought to be done with these counties; and if they did not the opportunity was afforded to the gentlemen while the third resolution was under consideration to offer the present amendment. Substantially, sir, this was defeated; because a motion was made by the gentleman from Doddridge to strike out the whole proviso, leaving not only Hampshire and Hardy but others in the same category to come in absolutely. Well, sir, I do not know how the Chair stated the question, or whether he stated it at all; but the only question before us this morning was on the adoption of the whole report. We not only passed upon or finished the third resolution, but took up the fourth and defeated it and took up the fifth in reference to the application to be made

to the legislature to provide for elections, and passed that; that completed the report. Now, there was no other question before us this morning but just: shall this report be adopted as a whole? Then, sir, this having been placed in the same category as motions from the standing committees, a motion to strike out or insert would be in order. But the gentleman moves to add to the report, not to substitute - to make an independent proposition, leaving it, in the first place, in the report that Hardy and Hampshire and these other counties are to vote on a certain day according to the terms of the resolution, and then another that Hardy and Hampshire are to come in anyhow, making the report entirely inconsistent with itself. It is then, sir, - unless the Chair decides that the report was taken up and that there is a proper question before the Convention - it is out of order absolutely. If we were upon the question of the adoption of the report, then if the motion had been in proper form it might have been in order. I think, sir, we had better start again and say the question before the Convention is upon the adoption of the whole report then if the gentleman will move to strike out what is already in the report concerning Hampshire and Hardy and move to insert in place of it what is in his resolution, that would be in order, sir.

THE PRESIDENT. The expression of the President was distinct. Upon the announcement of the fact, the gentleman from Doddridge moved to amend or add thereto. After the disposition of the question on that amendment, the gentleman from Hampshire introduced an amendment which is now up. The Chair had very strong doubts at the time that it was introduced whether it would be in order. The Chair recollected distinctly two things that had occurred in the Convention. One was that while this reviewing was proceeding on this report, the Convention without completing a section would pass over to another and make such amendments ...

MR. VAN WINKLE. If the question is now on the adoption of the whole report, then the gentleman from Hampshire's motion would be this: to strike from the third resolution so much as relates to the counties of Hampshire and Hardy, and to include the counties of Hampshire and Hardy in the first resolution. The effect of that would be to leave the other counties included with them to vote and decide the question for themselves, but to take these in as Greenbrier, Pocahontas, etc. were taken in. If that can be understood to be the question before the house, the Clerk can easily make it right and then we will know what we are doing.

THE PRESIDENT. I may be wrong; but that is my recollection.

MR. HALL of Marion. I have hastily prepared what I propose to offer as a substitute, provided it meets with the views of gentlemen and will not lead to any discussion. I have written it so hastily that I will read it. The proposition is an amendment to and substitute for the motion of the gentleman from Hampshire:

"Provided, also, that though the said district comprised of the counties of Pendleton, Hampshire, Hardy and Morgan, Jefferson, Berkeley and Frederick may not vote to constitute part of the four counties first named" - that is Pendleton, Hampshire, Hardy and Morgan - "Herein shall give a majority of votes at the proposed election in favor of the new State, then that the district composed of the said four counties be included."

I do not know whether it will meet the views of the gentleman or not.

THE PRESIDENT. Does the gentleman from Hampshire accept the amendment?

MR. SHEETS. No, sir. My object simply is to have those two counties stricken out of the third resolution and added to the first.

MR. HALL of Marion. I withdraw it if the gentleman does not accept it.

MR. VAN WINKLE. I would suggest, with all respect to the members of the Convention, that everything that pertains to these two counties has been thoroughly discussed, that the questions that relate to them are thoroughly understood, and that we might take this vote, I think, without more discussion, unless there is something new. We have spent a good deal of time on this.

THE PRESIDENT. The question is on the motion of the gentleman from Hampshire to strike out.

MR. HERVEY. As I understand the form of the motion, it is that they will not be included in this resolution but attached to the list of counties in the first resolution?

MR. SHEETS. Yes, sir.

The Secretary reported the proposed amendment as follows:

"RESOLVED, That the counties of Hampshire and Hardy be stricken out of the third resolution and inserted in the first."

MR. CARSKADON. I wish to be distinctly understood in this matter. On yesterday the Convention fixed this matter as I thought best for the interests of the State and of our county, and it will be with reluctance that I see the thing changed, if it must be so; but I shall bow to the will of the Convention. But I hope it may be the pleasure of gentlemen here, as the thing, I think, was fixed in the most wise and very best shape and in the shape that suited me - it does not my colleague;

he has a right to have his opinion - but suited me, and which I thought for the interest of the whole district, therefore I hope these counties will not be stricken out. As I said before, the legislature will have the whole circumstances before them and if they see proper to include Hardy and Hampshire peremptorily then it is within their power. But I see no reason - I think no sufficient reason at least - to affect the mind of any member of this Convention, why those counties should not have a chance to vote again. Does any member of this Convention say that less than sixty votes out of 800 or 900 Union votes, to count nothing else, out of a community that sometimes polls between 2200 and 2500, can be called an expression of the people of Hampshire county? If they do I disagree with them.

Therefore I hope it may not be the pleasure of this Convention to strike out Hampshire and Hardy from the resolution.

The question was then taken on the motion of Mr. Sheets to strike out and it was rejected by the following vote:

YEAS - Messrs. John Hall (President), Brown of Kanawha, Chapman, Cassady, Dolly, Hansley, Haymond, Irvine, Montague, O'Brien, Parker, Pomeroy, Ruffner, Simmons, Sheets, Stuart of Doddridge, Walker, Wilson - 18.

NAYS - Messrs. Brown of Preston, Brooks, Brumfield, Gald- well, Carskadon, Dille, Hall of Marion, Harrison, Hubbs, Hervey, Hagar, Lamb, Lauck, Mahon, Parsons, Powell, Paxton, Sinsal, Stevenson of Wood, Stewart of Wirt, Soper, Taylor, Trainer, Van Winkle, Warder - 25.

The question recurred on the adoption of the report.

MR. RUFFNER. I understand, sir, it is in order to offer an amendment to the first resolution, or rather to move a reconsideration of a vote taken to amend that resolution. My motion, sir, is to reinstate the counties of Buchanan and Wise in the first resolution. I shall give but one reason . . .

MR. LAMB. Excuse me for one moment. On what side did the gentleman vote?

MR. VAN WINKLE. Mr. President, I know the gentleman from Ohio does and I do attach some little importance to the order of proceeding a resolution was brought in by the Committee on Business that,

"Every report made by a standing committee shall in its turn, be considered and be open to amendment, section by section; but the vote on the passage of any section or clause shall not be final. The question shall recur on the passage or adoption of the whole report as amended and motions to strike out and insert shall be in order."

If I recollect rightly, sir, the chairman of the committee, the gentleman from Doddridge, when this report was taken up moved that it be considered by that resolution. As chairman of the Committee on Business, sir, I endeavored to explain both the object and operation of that resolution. I said that the Committee on the Order of Business had had under consideration the matter of referring these resolutions to the committee of the whole; that there were disadvantages attending that; and to get the benefit of the committee of the whole this course had been adopted. I have had occasion once or twice during the progress of these debates on the amendments that have been offered to the different resolutions to state to gentlemen that what we were doing was not final and that certain amendments would come in better on the question of the whole report. We are now through the report, section by section - that is, it is now in precisely the situation as if it had been committed to the committee of the whole and that committee had risen and reported to the house. That report would be this that the committee of the whole had had the subject referred to them under consideration and had made the following amendments or alterations. Then the whole question comes right up before the house. Now, sir, we are in that stage of the business as we shall be on every report before the Convention; and it is to be hoped, sir, that when gentlemen have seen the disposition of the house manifested strongly, they will not for factious purposes merely introduce the same amendments already once disposed of. It is now precisely the state of the case that was contemplated by this resolution when a general amendment might come in before the report is finally disposed of. I consider therefore the motion made by the gentleman from Kanawha is in order - that it is not, as the gentleman from Ohio supposes, a reconsideration. But I trust that gentlemen will not consider it necessary to go over the same ground we have gone over.

MR. LAMB. The first question we decided in reference to the report on boundary was how Buchanan and Wise should be disposed of.

That was the very first question. We decided numberless questions since in regard to the matter and we have got through and the question now comes up on the final disposition of the report. We are now going back to begin at the beginning and go over the whole thing again from the start, I suppose. If this motion is to be entertained, we have got back precisely to the starting point; and I suppose from the disposition that is exhibited this morning that we will go through regularly and decide over again what we have decided already. The gentleman from Kanawha, if he voted with the majority upon that question has a perfect right to move a reconsideration. Any member who voted with the majority who has changed his opinion and desires to change his vote has a right to move a reconsideration, but not one who voted the other way. And the reason of the rule is apparent - that unless some member has changed his opinion on the subject it is useless to bring the subject up again for consideration. I do think that under the eighth rule, which says that matters once determined must stand as the judgment of the house. If this rule properly applies anywhere, it properly applies here. This question has certainly been once decided. The judgment of the Convention has been expressed upon it; and it ought not to be brought up again unless it is upon the motion of some member who tells the Convention that he voted wrong before and wants an opportunity to have that matter reconsidered.

MR. BROWN of Kanawha. It seems to me unless the construction given by the gentleman from Wood is the true one in this case, that this rule is a trap and a delusion. We have acted on it with the continual declarations of the gentleman who perhaps more than any other was conversant with this subject, that this action of the house on these propositions separately was not final and that the liberty under the rule would be reserved to every individual to amend the report when it came up for final action. In regard to the argument of the gentleman from Ohio, that it is going over the same ground precisely the second time, I do not conceive that to be correct. It is very possible for a gentleman who voted when we were on the question of striking out these counties from the first section of the report to have voted with that view - with the expectation that perhaps two or three counties that have since been voted in would also be stricken out, and would therefore vote to strike out with that expectation. But it perhaps may be that finding himself disappointed by the inclusion of two or three that he did not want taken in, unless these too were taken in, he may now choose to take in these.

MR. LAMB. I do not deny that Mr. Ruffner if he voted to strike out these counties has a right to have a reconsideration.

MR. BROWN of Kanawha. I will not put it on that ground. I maintain the right he has to make this motion without any consideration. It is a new and distinct proposition by a gentleman who will now vote for it. With the whole action of the Convention before him, showing what counties have been taken in and what excluded, he will be prepared to vote for or against it. I confess it might make a very material difference in a man's vote to know exactly what would be the action of the Convention as to other counties. Now that action has been determined, and you can now vote understandingly.

MR. PAXTON. It appears to me if the views of my colleague should be sustained in the decision of the Chair, it would place us in rather an embarrassing position. The gentleman will recollect probably that yesterday evening I made a motion to amend one of the sections of this report by striking out the date. It was then stated, as has been stated time and again, that this was not final, that at any time in the future when we came to consider the whole report it could be amended in that particular as in every other. Now, I do not suppose that the presumption is that after you have amended in that particular or in any other a motion for reconsideration is necessary. If it should be, it would preclude our own amending or changing anything that we have done. The decision of the Chair yesterday evening was that when the report came up for final action - as it has been declared time and again - that then amendments were in order of any character. And this has been the uniform action of the Convention on the matter up to this time.

THE PRESIDENT. I think the Chair can satisfy the Convention of the propriety of his decision in this case. There is no doubt on the mind of the Chairman as to what has been continually understood during the proceedings upon the report of the committee and upon other committees; and the Chair distinctly recollects that when the question was pending on these two counties they were told that they might be stricken out and inserted in the other resolution.

A Member said: I supposed that was lost. I think I recollect distinctly it was then lost.

THE PRESIDENT (Continuing). On this report a motion could be made to reinstate them with the counties of Monroe, etc. Well, to prevent any misunderstanding hereafter, the Chair is disposed to make the statement more fully. The Chair recollecting when the gentleman from Ohio put his motion last evening as to striking out, told him he could at any time move to effect his object after the report was passed upon first, the various sections. He has no other recollection at present but that; but again the Chair is under the impression that it would not require a motion to reconsider even if it had not these other advantages. There are other considerations connected with these counties then that do not exist now. There was another resolution proposing to place a body of counties adjacent to us within the boundaries of the new State on certain conditions. That resolution has since been divided. Those counties would have been to some extent provided for had that resolution passed. But that resolution has been divided and the precise question that now is raised by the gentleman from Kanawha has never been before the house in the opinion of the Chair. Therefore the Chair would hold the motion of the gentleman from Kanawha in order; would with pleasure give the Convention the opportunity to decide it by appeal if they choose. He may be wrong.

MR. LAMB. I can assure the Chair it will be a very extreme case when I appeal from its decision on a question of order.

MR. VAN WINKLE. Does the Chair decide that the principle involved here - not in the particular case - but after a report from a standing committee has been gone over section by section and the question recurs on the adoption of the report as amended, that then it is still in order for a gentleman to propose to strike out and insert? That is substantially the resolution. That is the decision of the Chair? Well, now, sir, to relieve the gentleman from Ohio from the delicacy he feels, I will appeal from the decision of the Chair and let us have the decision of the Convention upon it, although I am in favor of it.

MR. LAMB. There is no doubt whatever about the question. The simple question was not whether it was in order to move to strike out but whether it was in order to move to reverse the decision that had been had before. These counties, Buchanan and Wise, were inserted in the first resolution. They were stricken out of the first resolution and now the motion again is, not a simple motion to strike out and insert new matter but to reverse, as I supposed, the decision that was made before. The Chair has decided that the motion is in order and there is no use of an appeal.

MR. STUART of Doddridge. Do I understand the appeal as having been taken?

MR. VAN WINKLE. I took it to accommodate the gentleman from Ohio.

MR. LAMB. I raised no question of that sort.

MR. VAN WINKLE. I thought it was as well. I will withdraw it if such is the wish of the Convention. I thought it was just as well to have the opinion of the Convention on it now and then it would not be drawn into question hereafter. I would add the single remark that a permission to strike out and insert - the greater always includes the less - does authorize a motion to strike out simply and insert simply.

MR. RUFFNER. I was going to make a single remark in support of the motion I had made; and I trust those gentlemen who are here taking notes will not put before the public what I say.

In the progress of this debate, sir, and in the consideration of this question of boundary great changes have taken place. A decision of the Convention has enlarged the original boundary considerably on both sides. They have added on the eastern side - at least in the opinion of the Convention - a considerable extent of territory which is to be added to the territory of the new State. That extension assumes a form which might be called a horn. We have already on our northern border a horn and I think it eminently proper to extend the spinal column to the other extremity; and the names of the two counties to be added are peculiarly appropriate to suggest that caudal extremity I therefore make that motion (Laughter).

MR. PARKER. I would move an amendment. I believe that would be in order. The amendment is, as I now understand it, to add the counties of Buchanan and Wise. Would an amendment to that be in order.

THE PRESIDENT. Yes, sir.

MR. PARKER. I propose as an amendment to that amendment to include so much of the county of Buchanan as lies west and northeast of the Tug Fork of the Sandy river - making the boundary: beginning at the corner of Logan county and running up by the Tug Fork of the Sandy river until it intersects the line of McDowell. Looking upon the map gentlemen will see that there is a small piece of Buchanan in that situation that it would seem ought to come within our bounds. So far as the balance of the two counties is concerned, we have discussed them fully, and my mind is not, from anything that has since transpired on the subject, changed on the subject. But that small piece lying in there it seems to me would make a much better boundary than running from the corner of Logan up by Logan line until it comes to Wyoming and then from Wyoming to McDowell and then back again until it strikes the Tug Fork of the river. Gentlemen will see by referring to the map.

THE PRESIDENT. The Chair would suggest that amendment would hardly be understood in that form; that it had better come in as a substitute.

MR. PARKER. I put it in that form.

MR. LAMB. The gentleman has got the wrong fork of Sandy.

MR. PARKER. Tug Fork, I said.

MR. LAMB. No, sir; not the Tug Fork.

MR. PARKER. I may be wrong, but I think not - with the greatest respect for the gentleman.

MR. LAMB. The Tug Fork is the northern boundary of McDowell.

MR. PARKER. Well, it is upon my map Tug Fork of Sandy, that is from this crossing down to the Ohio river. It runs up through Buchanan, then up into McDowell county, and in McDowell is the head waters of Tug Fork of Sandy.

MR. LAMB. The Tug Fork of Sandy is the boundary between Kentucky and Virginia. Louisa Fork is on my map.

MR. PARKER. Well, I think it is a mistake. I have two maps here.

MR. BROWN of Kanawha. I would suggest that the gentleman from Cabell reserve his proposition; that it is embraced in the other, which if adopted it would then be proper to take action on his proposition.

MR. PARKER. I propose to offer it as a substitute.

MR. HERVEY. I think, sir, the difficulties in the way of the gentleman from Cabell could be obviated by getting another map. I was led into that error myself. I think the gentleman from Ohio has a map that shows more clearly the boundaries of these two counties; and it will be seen from that that Buchanan county does not cross Tug Fork of Sandy at all. If the other map is the correct one, I suppose the amendment would be unnecessary.

MR. PARKER. I have two here - one of 1858 which was made with great care by the authority of the state and I believe that corresponds with the small maps which we have here. If I am in error in that particular, I do not wish now to offer any

substitute.

MR. HERVEY. The map which I hold in my hand is of the latest date - 1861, and by that map this stream does not form the boundary line of these two counties. But I cannot say whether the river has changed or the map has changed. But it does seem to me the report of the committee would be much better if it called for these streams - Tug Fork of Sandy and Camp Creek, as marked on my map. I would suggest, however, that the matter be postponed and a little consideration given to the subject. It strikes me from the position of these streams that they would form a much better boundary for the county line.

MR. TRAINER. There seems to be a difference in regard to this river - whether it passes through a part of Buchanan or not. I suggest that you make the river the boundary no difference where it is, in Buchanan or out of it.

MR. POMEROY. What is before the house, Mr. President?

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Kanawha.

MR. POMEROY. No, sir; we have to take up all that whole question again of adding counties, and we are not ready. I would like that the gentleman from Kanawha would withdraw that motion. My recollection is that these counties were stricken out and inserted with another class; and the motion prevailed to strike them all out. Now there is a motion to bring them in, and if that motion is to be before the house, I desire to be fully heard on that motion, but I hope it will be withdrawn.

MR. RUFFNER. I could not accept that suggestion, having made the motion.

MR. STUART of Doddridge. I wish to draw the attention of the gentleman from Hancock to a certain fact. Under the rule we have adopted, we go through these reports section by section, making many changes. After we pass through them in this way, acting just as in Committee of the Whole, we then look upon the work we have done - the edifice we have built - and it may be necessary that we have an opportunity to correct errors we have fallen into. That avoids the necessity indicated by the gentleman from Wood of going into the Committee of the Whole; and unless we do stick to this rule we will perhaps commit errors here and not have the opportunity of correcting ourselves.

I say as one member of this body, I do not feel disposed to bring up a question that has already been decided. Whether this motion has been having (?) in connection with the whole report passed as amended, I know that my own mind is made up and I think the minds of the Convention perhaps are; but we will have to stick to the rule, sir. If we do not, we will not have that deliberation in our body that is necessary we should have. As I remarked, we have reared an edifice, and if it needs amendments, we ought to have the opportunity of making them.

MR. VAN WINKLE. I venture to say that if any gentleman here would put a motion here that the Convention had decided against, it would have a factious appearance. I consider a motion put in that way could only be for the purpose of creating unnecessary debate, because the inference would be the decision of the Convention would be as it had already been before. But in this case it is free from that objection for these two counties it may be said have not had a fair trial. The committee placed them in the first resolution with the district that was to be admitted absolutely without vote. When the question came up for consideration, the gentleman from Ohio moved to strike them out of the first resolution; and it then was with the understanding that they would be added to the second district, table B. When table B or resolution 2 came up for consideration, I reminded the chairman of the committee of that understanding, and by unanimous consent of the Convention, those counties were placed in the second. The vote was to be taken on them together with Tazewell, Bland, Giles and some others. Well, sir, the question now up is not on the peculiar situation of Buchanan and Wise but on that whole district together and the Convention refuse to admit any of the districts. Now the gentleman from Kanawha simply asks the Convention to consider these two counties separate and reinstate them in their original position, and it may be supposed, sir, that there might be less objection to admit Buchanan and Wise now after this string of counties running along the Alleghenies has been refused; than if all had been taken together. I can imagine such a thing, sir. That while this question is a fair one and is properly made by those who are in favor of their admission, it still cannot require much debate on the mere merits of it. We all understand what is the position of those counties, and the question now presented is a different one.

MR. BROWN of Kanawha. Which Fork of Sandy does the gentleman call the Tug Fork.

MR. PARKER. The left hand.

MR. BROWN of Kanawha. Then your object is to exclude the county of McDowell from the first resolution. About four fifths of it is excluded by this.

MR. PARKER. It is to begin at the northeast corner of Logan. We then run up the Tug Fork of Sandy River until that river intersects the McDowell line. Then of course we take that line.

MR. BROWN of Kanawha. I would move to amend the amendment - or the proposition - of the gentleman by beginning at the very point he designates and running with the Cumberland Mountain along the line between Kentucky and Buchanan

until you reach the dividing ridge between the two forks of the Sandy, and then follow that dividing ridge until it intersects the great Flat Top Mountain which divides the counties of Tazewell and McDowell. That gives us a mountain barrier instead of a river boundary. The gentleman will observe that the southern boundary of McDowell and Buchanan are the counties of Russell and Tazewell and that boundary line is on the dividing ridge between the waters that flow east and west, or rather those that flow into the Ohio river on the one hand and those that flow into the Tennessee on the other. All the waters of Sandy head in that mountain range and flow from thence - from the back line of McDowell towards the Ohio, in a northerly direction, while the waters on the other side of the ridge run into the Clinch River. My object in making this motion is to secure a mountain instead of a river boundary. That fork of Sandy is a stream of considerable size; but if you take the river you split a neighborhood and you are splitting a county also.

A member suggested that the line was already there.

MR. BROWN of Kanawha. I understand the back line of McDowell is already on a mountain barrier; but the gentleman from Cabell proposes to run up the river, which makes a river boundary instead of a mountain boundary. I propose to make the side line the dividing ridge between the Clinch and Sandy Rivers. We all know that there are no two rivers that have not a divide between them.

MR. VAN WINKLE. There seems to be some difference in maps and differences of opinion about these lines. We all know that to Harpers Ferry and would give us a very respectable line of boundary. With a view to meet what seemed to be the wishes of those counties it occurred to me it would meet their object and it would be what some of the counties would have a right to ask. I therefore offer that as an amendment. That is, to insert at the end of the 26th line, the following:

"But if a majority of the votes in the said counties of Pendleton, Hampshire, Hardy, Morgan, Jefferson, Berkeley and Frederick be not in favor of forming a part of the new State, but a majority of the votes in the counties of Pendleton, Hampshire, Hardy and Morgan be in favor of forming part of the new State, then that the four last named counties be included."

Some of them propose that we should add to it the counties of Berkeley and Jefferson, and that would include all through which the railroad passes. I had only been providing for a tier.

MR. LAMB. Better take them all in.

MR. STEVENSON of Wood. That only leaves one out.

MR. HALL of Marion. This meets the object I had in view.

MR. PRESIDENT. Where does the gentleman propose to have his amendment come in?

MR. HALL of Marion. It has reference to the third resolution.

MR. VAN WINKLE. Might put it at the end. The Committee on Revision have to rearrange it.

MR. HALL of Marion. It would come by just adding it to the end of the section.

The Clerk reported it as follows:

"But if a majority of the votes in the said counties of Pendleton, Hardy, Hampshire, Morgan, Jefferson, Berkeley, and Frederick be not in favor of forming part of said new State, but the majority of the votes in the counties of Pendleton, Hardy, Hampshire and Morgan be in favor of forming part of said new State, then that said last named counties be included."

The amendment was adopted.

MR. STEVENSON of Wood. Mr. President, there is one other matter here that I would like to have amended, although I am precluded by the rules from offering an amendment, or offering a reconsideration. But I will state in a single word, almost, sir, the might defeat us in this project, while we, at the same time would have a majority of the votes in the district. Three counties might give an overwhelming majority in favor of coming in and four might give a majority against and that would keep them out. Well, now, if we strike that out, then we have the benefit of the whole counties - the majority in the three overcoming the majority against it in the four and thus bringing the district in. It would then read concluding in this way: "Also be included in and constitute part of the proposed new State: *provided*, a majority of the votes cast within the said district at elections to be held for the purpose on the third Thursday in April in the year 1862 are in favor of the adoption of this Constitution."

The question was taken on Mr. Sinsel's proposed amendment and it was rejected.

The question recurring on the adoption of the entire report, Mr. Brown of Preston demanded the yeas and nays.

Mr. Paxton called for the reading of the report as amended.

The report as full amended was read by the secretary in full.

MR. POMEROY. No doubt the gentleman from Marion intended to add a majority of the counties. That only said a majority of the said vote.

MR. HALL of Marion. I did not, because there were four of them.

The roll was then called and the report adopted by the following vote:

YEAS - Messrs. John Hall (President), Chapman, Caldwell, Carskadon, Cassady, Dering, Dolly, Hall of Marion, Haymond, Hubbs, Hervey, Hagar, Irvine, Lamb, Lauck, Montague, Mahon, O'Brien, Parker, Ruffner, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Stuart of Doddridge, Trainer, Van Winkle, Walker, Warder, Wilson - 32.

NAYS - Messrs. Brown of Preston, Brooks, Brumfield, Dille, Hansley, Harrison, Parsons, Powell, Paxton, Pomeroy, Taylor - 11.

MR. VAN WINKLE. Mr. President, it has occurred to me since this report was made that as this is a division of the state it would be necessary that the boundary should be set forth in the body of the Constitution; and it will also be necessary, perhaps, to describe in some way the Ohio boundary, in order that we yield nothing there. The ordinance establishing Kentucky, I think, - whether it was anterior to the ordinance erecting the Northwestern Territory or not I do not know - it ceded the territory lying to the northwest of the Ohio river. Under that a claim is made, while the jurisdictions for some purposes are concurrent, to the far bank of the Ohio as the territory of Virginia, at this time by which, of course all the islands pertain to Virginia. If the river was made the boundary, then we take the middle of the channel, and that in most cases would throw the islands to the other side. It may be remembered that this question was before the general court while that court existed and the case arose from the apprehension of some abolitionists on the Ohio side of the river opposite my county. The court was then composed of twenty-one judges I believe. It turned out, sir, that there were three opinions in the court. One went for high water mark; one for running water mark; and the third for low water mark; and as there was not a majority for either, there could be no decision. It was a very singular case, and they had to admit the parties to bail and let them go. Still, the claim is to the other side of the river, and it would be proper for consideration whether we should not in the language in which the old ordinance is couched repeat the claim in this Constitution. I merely mention these things in connection with the motion I am about to make, and that is:

RESOLVED, That the resolutions reported to the committee on the boundary, as passed by the Convention, be recommitted to the said committee, with instructions to report a provision to be inserted in the Constitution embracing the substance of said resolutions and fully defining the boundaries of the proposed new State.

I think, sir, that would be the best way to meet the case.

The motion was agreed to.

Report on Fundamental and General Provisions.

MR. VAN WINKLE. Well, sir, I now move that we take up and proceed further with the report on Fundamental and General Provisions, and that the same be the order of the day until it is completed. That is, the final report. It will not exclude gentlemen from time in the morning to offer propositions and so on if they have any.

The motion was agreed to.

THE PRESIDENT. The question is on the adoption of the 7th section, as amended.

MR. LAMB. I move its adoption.

Several members called for the reading of it.

The Secretary read it as follows:

"In all elections by the people, the mode of voting shall be by ballot."

MR. SOPER. I wish to add to that section the following:

"Except for such local officers as may by law be directed to be otherwise chosen."

I have been familiar with the practice of voting by ballot and have seen some of the inconveniences arising from it. It is to avoid such, sir, that I have offered this addition to the section intended to be applicable more particularly to township and

district officers.

Take, for instance, the overseers or surveyors of your highways - your township will be divided into perhaps 15 or 20 districts from which an overseer will have to be chosen. Now, sir, that is an office that will require a large number of names and a good deal of time to be spent in canvassing the vote. But is generally done in this way: one of the inspectors of election would give notice to the people what was about to be done and they would be chosen by motion.

Again, sir, if we introduce the common-school system, which I believe every gentleman here intends, our districts will have to be laid off into school districts probably a mile or two miles square. Every school district would have to have its officers. There will be trustees, school district clerk and probably a collector. Now if they have got to resort to the ballot, it will be attended with inconvenience and there is no benefit to be derived from it. People meet in the school-house and talk this matter over, motion is made and the officers are chosen. Again, when this question was up some gentlemen objected to the ballot in consequence of fraud. There have been frauds, sir, in the system; and one means of guarding against those frauds has been to have a particular kind of ballot box to receive the ballots. Now, sir, these boxes are to be taken out through all the districts. It will be attended with a good deal of inconvenience, and no benefit can result from it.

For these reasons, sir, I have seen fit to deem it necessary to offer the qualification to the section as first adopted.

MR. STEVENSON of Wood. I was going to ask, Mr. President, if we are certain we have the section as amended. I think the amendment offered by the gentleman from Hancock was a substitute for this.

The Secretary stated that it was offered as an amendment: to strike out all the words after "in all." The section as it would read if the amendment offered by Mr. Soper were adopted would be:

"In all elections by the people, the mode of voting shall be by ballot, except for such local officers as may by law be directed to be otherwise chosen."

MR. VAN WINKLE. I would suggest to the mover of the amendment whether his object would not be attained by reinserting the words "state and county"? - "In all state and county elections by the people, the mode of voting shall be by ballot."

MR. SOPER. I had thought in the first place of putting it "in all township elections."

MR. VAN WINKLE. We have not acted on the township yet.

MR. SOPER. I know; and for that reason I put it "local."

MR. VAN WINKLE. "In all state and county" - make those two positively by ballot.

MR. SOPER. Very well, sir, that will do.

MR. DERING. That would not embrace district elections, would it, for constables, magistrates, etc.?

MR. VAN WINKLE. That is what the gentleman proposes to leave out, sir, and it is for the Convention to decide whether they will or not.

MR. PARKER. It seems to be in doubt whether it should embrace Presidential and Congressional. "State and county" - is that confined to officers purely state, leaving out the election of Federal officers?

MR. VAN WINKLE. We are here at a loss from a circumstance that we cannot obviate at present but which may be obviated before long. There has been as yet no report from the Committee on County Organization. No report from the Judiciary Committee. We do not know what provision is to be made - whether a constable is to be a county officer or a township officer. I therefore suggest, sir, that we pass by this section for the present. When we have gone through this present report of the committee, I shall necessarily ask to let it lie on the table before taking a vote on the whole until the balance of the report is made. By that time it is probable reports from other committees will be in and be acted on, and then in the final adoption these corrections can be made.

I therefore ask that by general consent this section be passed by for the present.

MR. SOPER. I will consent to pass by but I intended my motion to be applicable to the township and district officers, meaning county overseers of the poor and the various officers whatever they may be.

Mr. Van Winkle's proposition to pass by the section for the present was put as a motion and agreed to.

The question recurring upon the 8th section of the report, the Secretary reported it as follows:

Sec. 8. 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.

MR. VAN WINKLE. This is about what is in the Constitution of Virginia. There is one addition. The old one reads: "or be liable to attend any court as suitor, juror or witness." This adds "judicial proceeding" - intended to cover the taking of testimony.

Mr. Van Winkle read the corresponding provision in the Constitution of Virginia and said:

That leaves the voter liable to perform military service during the time necessary to go and return. It is probably an oversight there. He has the same privileges of exemption from military service during the time he is going and returning home as while he is at the election. That is the way it obviously ought to be made. Also that says time necessary. This adds and convenient. Now our polls close at sundown and if a man starts off he could get to the distant parts of his county by midnight. This would imply that he might wait until he gets his breakfast next morning and be protected during that time. They are verbal corrections and I think make the thing more explicit and better understood and are not unimportant.

The section was put to vote and was adopted.

The 9th section was reported by the Secretary as follows:

Sec. 9. All citizens entitled to vote, and no other persons, may be elected or appointed to any state, county, or municipal office, but the governor, lieutenant governor, attorney general, judges and senators must at the beginning of their terms of service, have respectively attained the age of twenty-five years and have been a citizen of the State for five years next preceding, or at the time of the adoption of this Constitution.

MR. VAN WINKLE. I would state again, as chairman of the committee, that this is an attempt to embrace in one single provision, in one article and section of the Constitution, what is now scattered through several articles and sections. There is a provision where you speak of the executive and legislators, a provision about age and so on. This reduces them all to one; and I do not know but they may require a greater age for the governor, but otherwise they require seven years residence instead of five. The United States Constitution requires seven years citizenship for a member of the lower house and nine years for the senate. It strikes me for the purposes here he must have been a citizen of the State for the five years next preceding. They must, of course, be citizens of the United States and citizens of this State, which implies that they have been citizens for five years next preceding. I think the time is long enough.

MR. LAMB. I would suggest a difficulty that may arise out of the general terms in which this is expressed. As this is here expressed, any of the citizens entitled to vote could be elected a member of the house of delegates. Now, it is very probable the legislative committee may report to the Convention that the party should be entitled to vote in the county from which he is chosen. I take it if it rests upon this clause alone, a citizen entitled to vote in Kanawha county could be elected to the house of delegates from Ohio county and the reverse.

If that is the intention of the committee, all right. But the legislative committee may perhaps report that they ought to be entitled to vote in the county from which they are elected - members of the house of delegates - and that senators ought to be entitled to vote in the district from which they are chosen.

I want merely to direct the attention of the Convention to the question that may be involved in the general phraseology which is used here.

MR. PARKER. As to the provision requiring the governor, lieutenant governor, attorney general and judges to be residents for five years to be eligible, I notice that they vary in different states; some require for these offices a longer time and some a shorter time. It strikes me the time set here is reasonable. Of course for these high offices they should be resident in the state long enough to understand its peculiar interests and its laws; but when we come to senators I do not see how it applies. I see that for a member of the house of delegates a year's residence is all that is required. I see also by the present Constitution of Virginia, if I am not mistaken - I was looking at it this forenoon - the same residence is required for a senator as for a delegate. There is no distinction whatever. It is two years. I think I am right. There is no distinction between a senator and a delegate to the house. I do not see why there should be that difference. The senate has a little more dignity we know; but why a person to be qualified to be elected to that house should require a five years' residence and to the lower house of our legislature but one year - I do not see any reason on it. In looking at the provisions in many of the states, I see the same time is required for the house as for the senate. I like to see the judges and governor taken from old residents, but if we are going to open our new State to immigration, why we should be liberal to all classes. It seems to me that this so far as senators are concerned is going backwards instead of forwards. It is making a five years' residence when in 1850 at Richmond they made it two for a senator. No more than for a delegate. They must be a legal voter at elections, two years in the State and one in the county. That made them eligible to either house of the general assembly. I should therefore move, Mr. President, to amend by striking out the word "senators" in the fourth line of the Resolution.

MR. LAMB. For the information of the Convention I will read the provision in the present Constitution: "Any person may be

elected senator who at the time of election has attained the age of 25 years or is actually a resident within the district and qualified to vote for members of the general assembly according to this Constitution." Any person may be elected a member of the house who at the time of election has attained the age of 21 and is actually a resident in the county, city, town or election district, and qualified to vote for members of the general assembly according to the Constitution. The qualification to vote for members of the general assembly according to the Constitution requires a residence of two years in the State and twelve months in the county, city or town where he offers to vote. I move, Mr. President, we pass by the ninth section for the present to allow us to think a little more closely on these matters.

MR. CALDWELL. Before any action is taken on that motion, sir, I call the attention to the chairman of the committee to the phraseology of the latter part of this section. This matter, sir, was before the Committee on the Executive Department and it occurred to myself as well as other members of that committee that in view of the fact that the State of West Virginia is not in existence as yet, sir, and will not be until we are recognized by Congress and that the date of our existence will commence then, that no one will be eligible to these several offices until five years after the expiration of that period. Now, sir, to obviate this difficulty the Committee on the Executive Department used something like this "who have been citizens of any of the counties forming a part of this State five years next preceding or at the time of the adoption of the Constitution."

MR. VAN WINKLE. There's a word or two left out. It might read: "Who have been citizens of the State for five years next preceding or were so at the time of the adoption of the Constitution." The Convention will introduce those words by general consent, I suppose.

MR. POMEROY. I hope the motion will prevail that we will pass by. I hope we will just pass by for the present. When this matter comes up I would like to say something.

The motion to pass by the ninth section for the present was agreed to.

The Secretary reported section ten as follows:

Sec. 10. 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 and public danger, be required by law to make oath or affirmation, upon pain of suspension of his right of voting and holding office under this Constitution.

MR. VAN WINKLE. I would suggest a division of the question on the first and second clauses of this. From the beginning down to the word "State" where it occurs in the fifth line is the old provision. The latter part is a new provision and may induce some discussion. I ask that the vote may be taken on the first clause, and I presume there will be no objection, and then on the second.

MR. HERVEY. I move to add to the words "To support the Constitution of the United States and of this State" the oath of office required.

MR. VAN WINKLE. That will be required, I suppose, by the legislature. I do not know that it is necessary here. It can be put in though. If it is not, I apprehend it would not preclude the legislature from requiring that oath. I do not think the Constitution is exactly the place for that. I make no objection to it, however, if gentlemen insist on it. It is better as it is. This is providing what is considered as a fundamental thing. It is to require this oath to the Constitution of the United States as well as to the State. By the very terms of the Constitution of the United States all state officers are bound by it; and although we have had these repeated examples of perjury by men in high places in violating that official oath, yet I think it had better be retained. If gentlemen think there is anything here to prevent the legislature from prescribing the oath of fidelity, a clause had better be inserted. You might say "in addition to such oaths as shall be prescribed by law" or something of the kind. Yet I do not think it necessary.

MR. HERVEY. I have no particular desire to press my motion, but it would occupy but very little paper. I withdraw it.

The Chair put Mr. Van Winkle's motion to divide the question, and it was agreed to, and the first clause was thereupon adopted.

MR. VAN WINKLE. This second clause is a new one, and is particularly drawn from the necessities of the case as they seem to be existing around us. They are perhaps even at this time requiring this oath from the various officers, and some propositions I have seen there and in the previous convention have been making an ex post facto law. It is an extraordinary thing, it is true, for the legislature to require every citizen to take an oath of allegiance. It is done, no doubt, in other countries. It is a common thing in them under certain circumstances. But this does not propose to vest the legislature with power to make this a permanent law; but from our recent experience, it is believed there are circumstances when such a clause ought to be there. It entitles the legislature in time of war or insurrection and public danger only to require the like oath or affirmation to be taken by every citizen of the State. I apprehend if such a law had been enforced in the early part of this rebellion we would have been able to discriminate very soon between friends and enemies; and we would by the subsequent clause to which I shall advert presently have been able to reach them.

Now, sir, the penalty of disfranchisement - the deprivation of the most important rights of the citizen - is reserved for this grave offense. For certainly it is a grave offense to refuse when required by public authority in time of war to come and make an open profession before his God and his country of his allegiance to the State. It is punished by deprivation of the right of voting and holding office. So that a person who under those circumstances, whether a foreign or domestic enemy is on the soil, refuses to pledge himself in that solemn way to uphold the Constitution of the United States and of his own state, will be punished by this deprivation. It will have this effect. If he is in office, his office ceases instantly by the refusal. If he is out of office, he will not have the power to put a man there who is like himself. In such time, sir, the right of voting will be confined to those citizens who retain their allegiance to their country and to the State, which is a part of the country.

I therefore think, sir, that while this is a novel provision - And I am not aware that such a provision has been introduced into any of the states - yet that there are abundant reasons growing out of our recent experience commending this to us, because the necessity has shown itself, and which cannot be construed as invading private rights in any respect - cannot be construed as harsh or as requiring of a citizen more than his plain duty requires of him. Nor do I think that it can be considered that the punishment which is affixed to it is any too severe for the occasion. It is, sir, not upon the pain of having this right taken away from him forever; it is not that he is to find no place for repentance; it is not that he may have no benefit from returning to his allegiance, but upon pain of suspension of this right by law. The law will fix the time and circumstances during which it shall continue. In this form, sir, I think while the Convention will acknowledge that some such provision is highly necessary, they will acknowledge that under the circumstances it is intended to reach, this is certainly unobjectionable in itself.

MR. CALDWELL. I do not like the word "may," sir, in this section so well as the word "shall." What I mean, sir, is that those who offer to vote shall be required instead of using the word may be required.

MR. VAN WINKLE. It says that they may be required by law. The legislature is to judge of the necessity of putting this test. The law may be made as imperative that they shall as the legislature pleases. But it is not to be a standing provision. The legislature is to judge when the necessity for enforcing this provision arises. While up, sir, I will just state what I have just had my attention called to. It reads "In time of war, insurrection and public danger." It should read "or" as in the following section.

MR. CALDWELL. I do not insist on the amendment.

The question was then taken on the second clause of the tenth section and it was adopted.

MR. VAN WINKLE. The next section, sir, is a sort of omnium gatherum and contains several provisions. But from the suggestions of several gentlemen I propose to move that they be referred back to the Committee with a view of extending it. It is thought that while the United States Constitution confers no other power but what is expressly granted, yet when legislative power is conferred here in a state constitution it carries the legislative power that is not expressly withheld. That has induced me to ask that this may be referred back to the committee in order that they may consider whether they will not report additional provisions, in which case it may have to be subdivided into other sections. I will therefore ask that the eleventh section may be referred back to the committee.

The motion was agreed to.

The Secretary reported section 12 as follows:

Sec. 12. The legislative, executive and judicial department 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.

MR. VAN WINKLE. This, sir, is about what is in our Bill of Rights except that that says "ought." This is made imperative - made the rule.

Now, sir, notwithstanding we had it in the bill of rights and, I believe, in the constitution also but in that form that it never amounted to anything as a rule of government except to tell people it ought not to be so, the constitution itself provided for the exercise of all three of these powers by one set of officers. Justices of the peace while sitting as a county court were invested with all three, sir. They sat as a court of justice - which made them judiciary. They arranged the fiscal and other matters of the county - which made them legislative; and they directed many other matters connected with the county - which made them administrative. If not in fact executive. The principle is most certainly a good one. It is in the Constitution of the United States as a fundamental principle that the three ought to be kept distinct and adding that neither shall exercise the powers properly belonging to the others there shall be no encouragement of one to the detriment of another and no person shall be vested with the exercise of the powers of more than one at a time. That, sir, in plain language, means that a justice shall not be a member of the legislature. I think if he wants to go very bad he had better resign his justiceship. I mentioned that one case peculiarly legislative. That has been constantly the thing, that a man without resigning the judicial office may go and act in a legislative capacity. I think the rule is a good one and that it ought to be practically applied and carried out to the full extent. A man, therefore, who holds an office in the executive cannot at the same time hold one in the legislative department, nor can he act as justice or judge or prosecuting attorney. That is the intention of the committee; to keep these three departments of the government entirely distinct. Not merely to keep one department from exercising the powers of the other - a court from assuming executive functions, the legislature from

attempting to encroach on the proper duties of the executive - but that no person who holds an office in one of these departments shall assume to hold an office in any other of these departments.

MR. CALDWELL. I only wish to remark that I altogether approve of this section, sir, its provisions; and I rise merely to observe that one of the committees of this body went so far as to deprive the lieutenant governor, the second officer in the executive department, of the privilege of presiding over the legislative body in the present Constitution of Virginia. Sir, he is made the presiding officer of the senate without the right even to vote. The Committee on the Executive Department thought he ought not even to be the presiding officer of that body and I have so reported to this Convention. It met with my views heartily. So every provision in this section does and I hope we will adopt it.

Well, sir, the point might as well be decided now as at any other time whether an executive officer shall be a component part of the legislature. Now, sir, it is very easy to provide that the senate shall elect a president and that in case of any difficulty with the governor that the president of the senate shall act as governor for the time being or where the necessity continues, or that in the death of the governor he shall become the governor. He ceases to be a legislative officer then and takes the place of governor.

I hope a vote on this section may be considered as an instruction to the executive committee on that head.

MR. CALDWELL. The committee have so reported.

MR. VAN WINKLE. I beg your pardon; I thought you had reported the other way. Well, sir, I am glad to hear it.

MR. STUART of Doddridge. The committee also reported to recommend the election of a lieutenant governor.

MR. CALDWELL. To do nothing until the governor dies (Laughter).

The question was taken on the 12th section and it was agreed to. Section 13 was reported by the Secretary as follows:

Sec. 13. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. Every attempt to justify and uphold an armed invasion of the State, or an organized insurrection within the limits thereof, by publicly speaking, writing or printing, or the publishing or circulating of any such writing or printing during the continuance of such invasion or insurrection, shall be deemed an adhering to the enemies of the State. 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 real and personal property of the offenders, as may be prescribed by law.

MR. VAN WINKLE. Mr. President, I will ask here before I sit down that this section may be considered in clauses. The first is that "treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort." The second is "every attempt to justify and uphold an armed invasion of the State, or an organized insurrection within the limits thereof, by publicly speaking writing or printing, or the publishing or circulation of any such writing or printing, during the continuance of such invasion or insurrection, shall be deemed an adhering to the enemies of the State." Third, "treason shall be punished according to the character of the acts committed, by the infliction of one or more penalties of death, imprisonment, fine or confiscation of real and personal property of the offenders, as may be prescribed by law." The first defines the crime of treason, the second makes certain acts the proof of treason, and the third enables the punishment to be less than death.

There have been great doubts - and I think very good and well founded - whether there is such a thing as treason against a state. The United States Government undertakes the conduct of the war that is to be conducted in or on behalf of the states. States are not permitted by the Constitution of the United States to keep armies or ships of war in time of peace. The United States is bound to repel the invasion of any state, and is bound, upon proper application, to suppress any insurrection arising within any state. There is a qualification that application shall be made, but I shall only construe that as being to prevent the necessity of the United States forces being called forth on trivial occasions. It is very hard perhaps at some times to distinguish between a mere riot and an insurrection within its borders; but whenever a state notifies the general government in a proper way that there is an insurrection within its borders, then the United States Government is bound to send and suppress that insurrection. It is true it may use the state militia, but then it is put under control of the United States Government in time of war. Now, who can be enemies of the State, therefore, unless they are at the same time enemies of the United States? And if enemies of the United States, then the act of treason is an offense not against the state but against the United States. The first official recognition of this restored government was an application to the President on the information that the state was in a state of insurrection, and was a call on the United States Government for aid in those respects. The reply was almost immediate from the War Department that that aid would be furnished. That was the first formal recognition of the restored government. The documents accompany the governor's message. We hold, sir, from the first that all expenses incurred by this restored government or by the government of any of the loyal states in suppressing this rebellion, in defending even their own territory against the rebels or the insurrectionists - every dollar of expense that may be incurred in that way must be reimbursed to the state by the general government - and upon this very principle: that the war was the war of the general government. It was only the war of the states so far as they were part of the United States, and being their war they must be liable for the expenses. If this is correct, sir, then the other conclusion follows, of course, that treason can only be committed against the United States. There is not and has not been in the Constitution of Virginia any such clause. There is a statute, however, which defines treason in this way and makes other acts, for instance the setting up of another government treason against the State. I am not, sir, not anticipating that this

question would arise here this evening, as fully prepared to give my views on it as I might have been, but I think I have given the leading principles which must govern in this discussion. I have conferred with legal gentlemen outside of the Convention on the subject, and I believe they are of the same opinion. I think a similar decision has been made by the Supreme Court of the United States although I have not recently seen the decision itself nor cannot say precisely how far it goes. But I should like, of course, to hear from any gentleman who is familiar with the subject or can throw any light on it. I am sorry the member from Monongalia has been compelled to leave us. I had some conversation with him on the subject and I think he was very clear that there could be no treason against a state of this nation.

MR. LAMB. It does seem to me, I must confess, that it is entirely unnecessary for us to put any provision on this subject in the constitution of the state. I believe there is no provision on the subject of treason in the present constitution of the state. There is no provision in the constitution of the state on the subject of murder. Yet it does not prevent the legislature from enacting proper laws to prevent that offense. Why not leave this on the same footing as other crimes?

MR. BROWN of Kanawha. I acknowledge, sir, I must differ in toto with the gentleman from Wood in regard to the doctrine he lays down, that no treason can exist against the state. Wherever allegiance is owed, there the obligation of protection is a correlative and wherever the two exist, treason is the result. Treason is that violation of a man's allegiance to the country that he owes it to; and to the extent of the powers reserved by the states a man's obligations of obedience are as complete and perfect as they were before to the entire powers that the state had before any Confederation or United States was ever formed; and the states now forming the general government of the United States only conceded such powers as are delegated expressly in the Constitution, and it is expressly declared in that same Constitution, to preclude a contrary conclusion, that all the powers not delegated are expressly reserved to the states and the people. Every power, therefore, that is reserved - and that is a great residuum of power not delegated - is perfect and complete. There is nothing wanting in it; but to the extent of those reserved powers every citizen owes his allegiance direct and perfect to the state. To that extent he can commit treason; and it is as perfect an offense against the state as against the United States wherever the individual violates the obligations he owes to the United States where the powers have been delegated. Why, sir, I owe no allegiance to the United States beyond the powers delegated. The government of the United States is a perfect government within its prescribed limits. Outside of them I owe it no obedience. None whatever. Outside of those limits all my allegiance is to the State. The whole powers of sovereignty in this government, in this country, are carved out and distinct.

To the general government is conceded one part; to the State the other part; and it requires the two to make it complete. A citizen owes a divided and double allegiance; and it is never in conflict as long as these two governments keep within their prescribed boundaries. It is only when one undertakes to invade the rights of the other that there can be a conflict, and then it is that this question arises. And this question is not a one-sided one in Virginia. Why, sir, in the case of John Brown, at Harper's Ferry, they were indicted for treason against the State of Virginia, and convicted for it and sentenced for the same; and they were executed for the same; but as Governor Wise said to the President, when Virginia was done with them the United States could have the residue for any treason against the United States. It is a decided question; so far as I am aware, an undisputed question. I have never before heard it raised or mooted. Our statute books from the beginning of the commonwealth have defined and declared what treason against the state was, and the language used is the same that is used in the laws of the United States and in the Constitution of the United States: that treason against the state shall consist in levying war and giving aid and comfort to its enemies, and treason against the United States is levying war against the United States and giving aid and comfort to their enemies.

Well, sir, I differ with the gentleman in another particular materially: that whenever an insurrection arises in a state that it is an insurrection against the United States and that the United States can assume upon itself to put it down without first being called upon by the state government. I deny in toto any such proposition. I maintain within the borders of the state the jurisdiction of the state when a local insurrection arises within that border it is against the state government not against the United States Government. Mark you, against the state government. The United States has no right to enter the territory with her army or interfere with the local regulations of the state until, as prescribed in the Constitution of the United States, the governor or the legislature of the state calls upon the President to aid us; and whenever that is done then the Constitution makes it obligatory on the President to render the aid that is required, and that is one of the guaranties to secure every state for its protection against this insurrection. So that the entry of the general government to interfere with the state concerns is no part of its duty. It is a violation of the Constitution. We have provided against any such encroachment. The state manages its own affairs; and because the general government has no authority for interference is one of the reasons why the state has a right to claim the allegiance and obedience of the citizens, and if he refuses to render it, he commits treason against the state.

Again the gentleman alludes to some decision of the Supreme Court of the United States. I confess I am aware of none, and I think the gentleman is mistaken. I think he will find that the Supreme Court have never uttered any sentiment of the kind - that no decision of the kind has ever been made. If it has it is new to me. I have neither heard of it through the press nor have the law books reported it. I confess I do not feel the necessity of including this clause in the Constitution, for I believe all this is legitimate action for the legislature; and as the legislature of a state, unless prohibited has all power delegated to it to do as it pleases, that this would be fully within the purview of legislation, and heretofore it has been in our state the subject of legislation. I hold it is wholly immaterial whether it be in the Constitution or submitted to the legislature. Here it defines and describes, and it is as well done here as there. It is not so easily altered. That is the only objection, I conceive that could be taken to it.

MR. VAN WINKLE. The authority I refer to is Story's Commentaries. I have sir, a little book here which has a few words on this subject which I would like to read to the Convention, confirming, to some extent at any rate, the remarks I have made.

Mr. Van Winkle then read from a Constitutional Manual, which he held in his hand, which referred to 1 Story's Commentaries 171, and regretted that he had not at hand the authority cited:

"A State cannot take cognizance of or punish the crime of treason against the United States. As treason is a crime whose object is to overthrow the government, and the government of the State is guaranteed by that of the United States, it follows, there can be no treason against a State which is not also treason against the United States, and consequently the crime of treason cannot be punished by the States."

MR. VAN WINKLE. Of course, there can be no doubt of that. That I presume is not a question that is mooted anywhere.

MR. PARKER. What authority is that?

MR. VAN WINKLE. I do not offer the book as authority. It is only argumentation. It refers to Story as authority for that much; that a state cannot punish treason against the United States, and I think it is very obvious that it cannot, and I presume that is granted without any difficulty. Well, it then goes on to say - and there I certainly coincide with it, and it was what I was endeavoring to illustrate to the Convention in my former remarks - that anything in the nature of opposition to a state - in the nature of levying war against a state, is at the same time levying war against the United States and is therefore treason against the United States, and if treason cannot be punished by a state, the state cannot justly punish that treason which is even committed against itself or that treason which consists in levying war against itself. If the principle is a good one that no state can punish treason against the United States then although that treason consisted in levying war against the state itself, it is still precluded from the right to punish it. I cannot take the John Brown case as much authority, especially if accompanied with that declaration of Gov. Wise, that when the state was done with John Brown and his confederates the general government could have what was left of them. I should think, sir, it was only the first act of rebellion. I do not know how it happened that the United States officers did not claim jurisdiction in that case. But I cannot think the case as tried before the circuit court there decides anything in reference to the matter in question.

MR. BROWN of Kanawha. The gentleman, perhaps, has but little regard for the authorities of Virginia, as I should infer from the last remark he made, and may have a good deal for Judge Story or the book from which he reads. Surely the remarks of Gov. Wise could not affect the validity of a judicial decision.

MR. VAN WINKLE. I say that the language in which that remark was couched, and the spirit in which it was conceived, indicated a rebellious spirit against the United States, and the whole transaction might be in the same spirit. They claimed a right to punish where they had no right.

MR. BROWN of Kanawha. I must deny that. That is begging the question. The question here was whether treason could be committed against a state. That was a matter to be decided. That was decided by a judicial tribunal, the proper one the law had referred the case to; and, sir, the ablest counsel in the country were there. The most learned lawyers came there to test this very question. Every question that could be made in it, almost, and many more, were made. I recollect Mr. Gushing took a very active part in the discussion of that question in public assemblies; and I believe the attorney general was very strenuous that if anything wrong was done to that man the power of the nation should be brought to his rescue, but that everything was legitimate; and it was carried to the Court of Appeals of Virginia and they refused a supersedeas to it. And could it be supposed, if it were the plan, an easy matter that a man and his Confederates were taken up and tried for a crime they never committed, and they all citizens of other states anxious to secure his release and all the anxieties of a great Nation anxious to relieve him if he were not guilty, and the Supreme Court of the United States ready to issue its mandamus? And would it be possible that these men would be allowed under this plain state of the case to be tried and sentenced to hang for an offense that could not be committed? The authority cited by the gentleman is a mere ratiocination of some writer whom I know not, and for whom - without any disrespect to the gentleman or his book - I care less. Ratiocination upon this fact that the United States Government guarantees to every state the state government. That is a misconstruction. The guaranty is not in a state government. The Constitution of the United States guarantees a republican form of government.

MR. VAN WINKLE. The gentleman is misquoting me. The authority is merely as to the fact that the state cannot punish treason against the United States.

MR. BROWN of Kanawha. Very well, sir, there is no question that a state government cannot undertake to exclude the laws of the United States. The United States is a perfect government of itself, and that was the very object of its creation. It is a distinguishing feature of the old Confederacy that it executes its own mandates on the citizens; and we are citizens and therefore liable to obey its orders. And it depends not on the state government and it cannot therefore try and convict a man under a law the state government did not pass and under an offense that is due to another government.

But the question is, can treason be committed against the state? We know that treason exists against the state and it is everywhere recognized and understood that the state cannot exclude the laws of the United States; but the question is, cannot a state declare what is treason against itself? And try and execute a citizen for disobedience to its mandates and violation of that allegiance? I show the authorities are that they can do it. The reason is because treason is that violation of the obligation which the citizen owes to the sovereignty to the extent of the powers that that sovereignty has a right to claim his obedience. If the state, therefore, has the power to demand my obedience and I refuse to obey, it can punish me; and if I seek to break down the government that makes its laws, it is treason against the government. And the government of the United States, in guaranteeing to the states a republican form of government, does not guarantee to the state,

therefore, the government that is in it now and does not undertake to assume to set its foot in the borders of Virginia until it is called on. Why, sir, in the very case of John Brown, Gov. Wise complained of President Buchanan because he did not send the army there to put him down. What was his reply? Why, sir, if you show that there is an insurrection in Virginia, and you want the army of the United States, you shall have them in 20 minutes. But until you call for them, I cannot send them to put down insurrection against the government that you do not require. He sent the Marines there to take care of the arsenal and to assist the marshal in the execution of his duties at Harper's Ferry, but never sent any armies into the state until the governor calls for them or the legislature requires it. There can be no question about the fact to my mind of the existence of treason against the state.

MR. VAN WINKLE. I desire to ask the gentleman a question and that is, whether, in his opinion, the government of the United States could have punished John Brown?

MR. BROWN of Kanawha. I have no doubt about it.

MR. VAN WINKLE. If they could, then it was treason against the United States. And if it is treason against the United States, my point is simply that the state cannot punish him.

MR. LAMB. Mr. President, I do not want, for one, in this Convention, to undertake to decide grave legal questions between the two gentlemen. If we do our authority may get into the books; and I want more light on it before I, for one, undertake to give an opinion on that subject. However, we can get rid of the difficulty very easy. My friend from Wood argues that it is doubtful at least whether the state can punish treason, because treason against the state must be necessarily treason against the United States. Hence this state of the case: it is certainly improper to insert this provision into the Constitution. The gentleman from Kanawha argues, on the contrary, that the state has unquestionably the right to punish treason against herself, but he tells us at the same time that is unnecessary to insert this provision in the Constitution. The State of Virginia has punished John Brown without a provision on the subject, and the legislature will have full authority to legislate on the subject, if a state can do it, without our putting anything in the Constitution about it just as much as it will have authority to legislate on the subject of any other crime. I have been looking at the constitutions of the different states. I have not, of course, been able to give them that thorough search which I ought to give in attempting to speak in reference to them; but I have not found, as yet, any constitution of a state that contains a provision similar to this except the Constitution of the State of Delaware. In the other states it is generally omitted; and I think it would be the much better course for us to take in this case.

I move to strike out section 13.

MR. PARKER. I am not very much prepared to speak on this question; but I must say it is the first time in my life that I ever heard it questioned by anybody, whether judicial, lawyers, judges, that treason could not be committed against a state government. I agree with the gentleman from Kanawha throughout. I supposed it a fact just as perfectly settled in this country that treason could be committed against a state government as the fact was established that state governments exist. Government is government. A state government has the allegiance of its citizens. Every government has the allegiance of its citizens or it is no government at all. Wherever allegiance exists, a violation of that allegiance is treason. No doubt of it. I never heard it questioned in any state of this Union.

MR. VAN WINKLE. I was only quoting what Judge Story says about it.

MR. PARKER. Judge Story says that treason against one government cannot be punished by another government. Well, I suppose that is very clear. I do not suppose any of us want to argue that question. The government that is assaulted and injured is the government that punishes. What has that to do with this question? The question is here simply, under our system of government can treason by its citizens be committed against a state government? I say if we deem that such a thing as a state government exists, then we admit that treason is capable of being committed against it. Admit the one, the other goes with it. Government is protection on the one side, duty and allegiance on the other. As I understand the theory of our government in the people, from the people all power originally arises and in them is vested. I am a part of the Constitution of Virginia. They have made the government of Virginia. As an American citizen, I am also a part of that great constituency which has erected the Federal government. Therefore, I am a citizen of two governments. They are both amenable to me. The people are the source of power for them both. Both governments spring from the people and rest upon them. The people have invested the one government with certain powers and called them agencies, if you choose. They are our agents. They have that in common. The people of Virginia, in common with the rest of the people of the United States, have conferred certain powers - we will describe them as limited - upon the Federal Government. Now, so far as we have clothed these two governments with power, we owe allegiance to those two governments so long as they keep within limit of those powers which we have delegated. We are amenable to them. If the two powers should come in conflict of course the state power gives way to the Federal power, for that is the supreme law of the land. That is the point. Where they come in conflict, then the state law gives way to the Federal law, and we cannot violate them both because the state law being in conflict with the Federal law it is a nullity. We do not break it. But there is ample field for the state legislation outside of Federal legislation. If we violate our allegiance to the state where it is legitimate allegiance, why, then, it is treason to the state. The Federal Government has nothing to do with it - nothing unless the act that we do violates our allegiance to the Federal Government acting within its legitimate and prescribed powers. If it is without those powers, we have nothing to do with it. It is an agent without any authority the power the people have not granted to these governments is still reserved and we hold ourselves. What we have given to the Federal Government is the supreme law of the land. If we violate that, then to that government we are alone amenable. If outside of those powers, we violate our duty and the powers we have put upon the state agent, failing in our allegiance to that, in case of rebellion or resistance to

the execution of a state law - suppose a state court of equity in and chancery should issue an injunction to deliver up such and such property, and force should meet the power, the officer, that was executing it, why that would be a resistance to lawful authority; it would be rebellion; if carried out, it would be treason. Suppose it is to put A. B. in the possession of a piece of land, that does not touch any power -

MR. LAMB. I would suggest to the gentleman that he addresses his remarks to the President, as he should under our rule. I don't know whether he is speaking at me or the gentleman from Wood (Laughter).

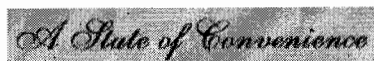
MR. PARKER. Thank you. Therefore, in that case - I thank the gentleman from Ohio; I thank him again - (Laughter) - the resistance to that officer when executing a state law, Mr. President, would be rebellion; if the resistance was large, covering a sufficient force, it would raise itself into treason - not treason against the Federal Government, for it has not violated a law of the Federal Government, but against the State of Virginia. By the Federal Constitution, the State of Virginia has a right to call upon the Federal Government to come and help her put down that rebellion. The Federal Government acts not that it is struck or wounded or touched but because in fulfillment of an obligation she is under to every state she is bound to come in and help them when called on. Just as President Buchanan said to Governor Wise: When you call for me, I will send forces. Through every state in this Union, in its constitution and statute books, you will find treason against the state; and treason being a fact, I want it in the Constitution. Treason has now become a common and very troublesome matter; and so far as I am concerned, I want to see it put in the Constitution, not leave it to the legislature. In regard to the terms which I would like, I thought it was very well expressed. The chairman of the committee expressed it except one word "adhere" there. It should be "adhering," giving aid and comfort; for adhering to the enemy merely mentally, without some overt act, without giving aid and comfort, does not constitute treason in this country.

MR. HALL of Marion. I feel very anxious to see some provision in regard to this matter engrafted in the Constitution; and this is a question that considering the hour tonight and the time it has been under consideration in this body, I apprehend we might all profit by sleeping on it till morning. I have an opinion on it; I am ready to act on it; I have thought of it; and I have a decided opinion that I shall not trouble the Convention with any remarks; now in consequence of the hour. I do not know that I shall in the morning. But I move we adjourn.

The motion was agreed to and the Convention adjourned.

<u>November 26, 1861</u>	<u>January 8, 1862</u>	<u>February 3, 1862</u>
<u>November 27, 1861</u>	<u>January 9, 1862</u>	<u>February 4, 1862</u>
<u>November 29, 1861</u>	<u>January 10, 1862</u>	<u>February 5, 1862</u>
<u>November 30, 1861</u>	<u>January 11, 1862</u>	<u>February 6, 1862</u>
<u>December 2, 1861</u>	<u>January 13, 1862</u>	<u>February 7, 1862</u>
<u>December 3, 1861</u>	<u>January 14, 1862</u>	<u>February 8, 1862</u>
<u>December 4, 1861</u>	<u>January 15, 1862</u>	<u>February 10, 1862</u>
<u>December 5, 1861</u>	<u>January 16, 1862</u>	<u>February 11, 1862</u>
<u>December 6, 1861</u>	<u>January 17, 1862</u>	<u>February 12, 1862</u>
<u>December 7, 1861</u>	<u>January 18, 1862</u>	<u>February 13, 1862</u>
<u>December 9, 1861</u>	<u>January 20, 1862</u>	<u>February 14, 1862</u>
<u>December 10, 1861</u>	<u>January 21, 1862</u>	<u>February 15, 1862</u>
<u>December 11, 1861</u>	<u>January 22, 1862</u>	<u>February 17, 1862</u>
<u>December 12, 1861</u>	<u>January 23, 1862</u>	<u>February 18, 1862</u>
<u>December 13, 1861</u>	<u>January 24, 1862</u>	<u>February 12, 1863</u>
<u>December 14, 1861</u>	<u>January 25, 1862</u>	<u>February 13, 1863</u>
<u>December 16, 1861</u>	<u>January 27, 1862</u>	<u>February 14, 1863</u>
<u>December 17, 1861</u>	<u>January 28, 1862</u>	<u>February 16, 1863</u>
<u>December 18, 1861</u>	<u>January 29, 1862</u>	<u>February 17, 1863</u>
<u>December 19, 1861</u>	<u>January 30, 1862</u>	<u>February 18, 1863</u>
<u>December 20, 1861</u>	<u>January 31, 1862</u>	<u>February 19, 1863</u>
<u>January 7, 1862</u>	<u>February 1, 1862</u>	<u>February 20, 1863</u>

Chapter Eleven: First Constitutional Convention of West Virginia



WEST VIRGINIA DIVISION OF CULTURE AND HISTORY

WV
A&H

West Virginia Archives & History

*A State of Convenience*
THE CREATION of WEST VIRGINIA
An On-Line Exhibit
West Virginia Archives and History**Debates and Proceedings
of the
First Constitutional Convention
of West Virginia**

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. The right to enter upon or bring actions for the recovery of lands lying within this State, shall, for the term of twenty-one years next after this Constitution goes into operation, be limited to seven years next after the time when such right accrues or shall accrue; saving to persons of unsound mind or under the age of twenty-one years, the right to make such entry or bring such actions within one year after the removal of their respective disabilities, and not afterwards, notwithstanding the said seven years shall have expired; but no such action instituted previously to the time this Constitution goes into operation shall be affected by any of the provisions of this section. After the expiration of the said term of twenty-one years the limitations of such entries and actions shall be prescribed by law.

"2. All lands lying within this State which have not been entered for taxation, or upon which taxes have not been paid to the State of Virginia or this State for more than five years, shall be deemed and declared forfeited, and forever irredeemable, and such forfeiture shall not be released. No grant or patent for forfeited, waste or unappropriated lands, shall issue after this Constitution goes into operation, except upon surveys made according to law and duly returned to the land office previously thereto; but all such lands shall be publicly sold under decrees rendered by the circuit court for the county in which the same, or the greater part thereof, may lie, upon proceedings in the nature of proceedings in rem therein instituted, in such manner as shall be prescribed by law.

"3. The money received for lands sold under the preceding section, after deducting the costs and expenses of the proceedings and sale, shall be deposited in the treasury of the State. When forfeited lands are sold, the excess of the proceeds thereof deposited in the treasury as aforesaid, over the taxes and damages charged and chargeable thereto under the laws of the State of Virginia and of this State, shall be paid to the respective former owners thereof, who shall prove

themselves entitled to such excess before the circuit court which decreed the sale of the same, by proceedings instituted in such court within five years next after such sale, in such manner as shall be prescribed by law. Appeals from the decisions of circuit courts in such cases to the court of appeals shall be allowed if applied for within one year next after the decree of sale by or for any person claiming an interest in the land sold, as owner of any part thereof; but the proceedings of the circuit courts leading to the sale of such lands shall not be otherwise re-examined or drawn in question in any court of the State, unless fraud or collusion, or the actual payment of all taxes and damages, charged and chargeable to the land sold, previously to the institution of the proceedings against, the same, be alleged and proved by the claimant, and then only in the court where such proceedings were had.

"4. All money being- the proceeds of forfeited, waste and unappropriated lands deposited in the treasury, and not reclaimed by the former owner as aforesaid, shall be carried to 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 "liberty." 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 burdens 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, 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 of 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 reasoning 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 immense 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, Sinsal, Stephenson of Clay, Stuart of Doddridge, Smith, Taylor, Walker, Warder - 22. .

NAYS - Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Galdwell, 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:

"7. No county, township, city, town or other municipal corporation, by vote of its citizens or otherwise, shall become a stockholder in any joint-stock company, corporation or association whatever; or raise money for, or loan its credit to, or in 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 semicolon, 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 county. 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 Convention 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:

"8. 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 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 regulation 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 extent 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, Sinsal, 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, Stew-art 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 appointed 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 revision 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 principle 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 recommitted 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 second 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 increasing 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 gentleman said on the floor that they did not expect we would end before 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 objection 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 Convention, 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 objections to that; but to recommit to this new committee, with the feelings 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 towards 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 recommitment 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. RAYMOND. 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 today. 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 reelecting 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 reference 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 compensation 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 magnificence 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. RAYMOND. 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.

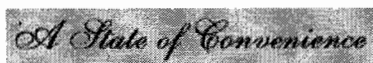
NAYS - Messrs. John Hall (President), Brown of Kanawha, Brumfield, Battelle, Chapman, Caldwell, Cook, Dering, Dolly,

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.

<u>November 26, 1861</u>	<u>January 8, 1862</u>	<u>February 3, 1862</u>
<u>November 27, 1861</u>	<u>January 9, 1862</u>	<u>February 4, 1862</u>
<u>November 29, 1861</u>	<u>January 10, 1862</u>	<u>February 5, 1862</u>
<u>November 30, 1861</u>	<u>January 11, 1862</u>	<u>February 6, 1862</u>
<u>December 2, 1861</u>	<u>January 13, 1862</u>	<u>February 7, 1862</u>
<u>December 3, 1861</u>	<u>January 14, 1862</u>	<u>February 8, 1862</u>
<u>December 4, 1861</u>	<u>January 15, 1862</u>	<u>February 10, 1862</u>
<u>December 5, 1861</u>	<u>January 16, 1862</u>	<u>February 11, 1862</u>
<u>December 6, 1861</u>	<u>January 17, 1862</u>	<u>February 12, 1862</u>
<u>December 7, 1861</u>	<u>January 18, 1862</u>	<u>February 13, 1862</u>
<u>December 9, 1861</u>	<u>January 20, 1862</u>	<u>February 14, 1862</u>
<u>December 10, 1861</u>	<u>January 21, 1862</u>	<u>February 15, 1862</u>
<u>December 11, 1861</u>	<u>January 22, 1862</u>	<u>February 17, 1862</u>
<u>December 12, 1861</u>	<u>January 23, 1862</u>	<u>February 18, 1862</u>
<u>December 13, 1861</u>	<u>January 24, 1862</u>	<u>February 12, 1863</u>
<u>December 14, 1861</u>	<u>January 25, 1862</u>	<u>February 13, 1863</u>
<u>December 16, 1861</u>	<u>January 27, 1862</u>	<u>February 14, 1863</u>
<u>December 17, 1861</u>	<u>January 28, 1862</u>	<u>February 16, 1863</u>
<u>December 18, 1861</u>	<u>January 29, 1862</u>	<u>February 17, 1863</u>
<u>December 19, 1861</u>	<u>January 30, 1862</u>	<u>February 18, 1863</u>
<u>December 20, 1861</u>	<u>January 31, 1862</u>	<u>February 19, 1863</u>
<u>January 7, 1862</u>	<u>February 1, 1862</u>	<u>February 20, 1863</u>

Chapter Eleven: First Constitutional Convention of West Virginia



[West Virginia Archives and History](#)

West Virginia Division of Culture and History
Copyright 2010. All Rights Reserved.
[Privacy Notice](#)

WEST VIRGINIA DIVISION OF CULTURE AND HISTORY



West Virginia Archives & History

Daniel Duane Tompkins Farnsworth

Compiled by the West Virginia State Archives

December 23, 1819 - December 5, 1892

(R) Upshur County

Appointed to serve from February 26, 1869 - March 4, 1869

Daniel Duane Tompkins Farnsworth was born on Staten Island, New York, and moved to Buckhannon, Upshur County, at the age of two. He was raised on a farm and later worked as a tailor, merchant, banker, railroad director, and as one of the first Upshur County justices of the peace. In 1861, Farnsworth became a member of the first Wheeling Convention, proposing the first statehood resolution. He served in the Reorganized Government of Virginia and West Virginia state senates between 1862 and 1869, and helped revise the state code in 1868. On February 26, 1869, Arthur I. Boreman resigned as governor to join the United States Senate. Farnsworth, as state senate president, succeeded him, serving a seven-day term.

During the 1870s, Farnsworth was a leader in the state's Greenback party and attended the 1872 constitutional convention. He died in Buckhannon in 1892.

Inaugural Address

Newspaper Articles On Farnsworth Taking Office

Governor D. D. T. Farnsworth Letter, 27 February 1869

Finding Aid for the Farnsworth Family Collection

West Virginia's Governors



West Virginia History Center

WEST VIRGINIA DIVISION OF CULTURE AND HISTORY



West Virginia Archives & History

William Erskine Stevenson

Compiled by the West Virginia State Archives

March 18, 1820 - November 29, 1883

(R) Wood County

Elected governor in 1868

William Erskine Stevenson was born in Warren, Pennsylvania. In 1829, he moved to Pittsburgh and worked as a cabinet maker's apprentice. He was elected to the Pennsylvania legislature in 1856, but moved to Valley Mills, Wood County, before his term expired. Stevenson served in the first state constitutional convention in November 1861, and was elected to the first West Virginia Senate in 1863, serving as president from 1865 to 1868.

As governor, Stevenson successfully advocated for the right of Confederate veterans to vote. Ironically, most Confederates were Democrats, leading to Stevenson's defeat for re-election in 1870. He supported equal education rights for blacks, increased immigration, improved transportation, and the development of industry. In 1870, the entire state government moved from Wheeling to Charleston, the first of three relocations.

After leaving the governor's office, Stevenson published the *Parkersburg State Journal* with O. G. Scofield. He held the position of receiver for the West Virginia Oil and Land Company until shortly before his death in 1883.

Inaugural Address

Gubernatorial Papers Finding Aid (1869-1871)

West Virginia's Governors

JOURNAL

OF

CONSTITUTIONAL CONVENTION,

ASSEMBLED AT

CHARLESTON, WEST VIRGINIA,

JANUARY 16, 1872.



CHARLESTON:

HENRY S. WALKER, CONVENTION PRINTER.

Respondent Thompson
Exhibit No. 17

five hundred or more inhabitants, to erect (in a place convenient for the citizens of said town or village), a depot or station sufficient for the accommodation of the trade or travel arriving at or departing from the same, or otherwise of allowing the inhabitants of said town or village to erect said depot or station at their own expense, and to that end allowing them power to condemn lands for the purpose, and requiring said railroad companies to stop their trains at said station or depot so erected and receive and discharge freight and passengers as at other depots.

On motion of Mr. Mathews,

Resolved, That the Committee on the Legislative Department of the Government be instructed to inquire into the expediency of providing for the incorporation by a general law of companies to construct works of internal improvements.

Mr. Morgan offered the following:

Resolved, That the apportionment of representation shall be based upon the entire population.

Referred to the Committee on Legislative Department.

On motion of Mr. Robinson,

Resolved, That the Committee on Executive Department inquire into the expediency of providing in the Constitution for the election of a Lieutenant Governor who shall preside over the Senate.

Mr. Davenport offered the following:

Resolved, That the names of the counties of Grant and Lincoln be changed to those of Davis and Lee.

Referred to the Committee on County Organization.

On motion of Mr. Cushing,

Resolved, That the Public Printer, when he prints the report of the Auditor for the use of the Legislature, be instructed to print in addition thereto one hundred copies for the use of this body.

On motion of Mr. Jackson, of Lewis,

Resolved, That the Committee on Education inquire into the expediency of transferring the duties of the State Superintendent of Free Schools to the Secretary of State, and the duties of County Superintendent to the Prosecuting Attorney.

On motion of Mr. Thompson,

Resolved, That the Judiciary Committee inquire into the expediency of incorporating in the new Constitution the following:

The sheriff and all other officers who are required by this Constitution to give bond shall each give his bond in his county before the Judge of the Circuit Court, with good and sufficient surety in double the amount of his (the officer's) supposed official liability, and it shall be the duty of the judge taking the bond to inquire of the surety

how much property in money value does he own, what that property consists of, where it is, whether or not there is any lien upon it for the payment of which it might become liable; and if the judge finds the property named by the surety to be of such a character, or in such place or condition, as that it would be likely to avail but little or nothing when sought for by legal process, he shall so estimate it as security, and whatever property the surety names as making up the sum or any part of his estate shall, if he be accepted, in whole or in part from that time forth be held as under mortgage for the official liabilities of the officer for whom he is in part or in whole the surety.

On motion of Mr. Smith,

Resolved, That the Committee on Forfeited and Unappropriated Lands inquire into the expediency of providing in the Constitution that entries by warrant on unappropriated land, shall be made as prior to the adoption of the present Constitution, and that all such land shall, after the title thereto has been forfeited, be sold and one half of the net proceeds of such sale shall go to the Literary Fund of the State.

On motion of Mr. Gallaher:

Resolved, That the Committee on County Organization inquire into the expediency of providing for the election of three Commissioners in each county of this State, as a substitute for the present Boards of Supervisors.

On motion of Mr. Bassel:

Resolved, That the Committee on the Judicial Department of the Government be instructed to inquire into the expediency of providing for the election of Judges, by the Legislature.

On motion of Mr. Warth,

Resolved, That the Committee on Taxation, Finance, Corporations and Education, be instructed to inquire into and report the expediency of providing in the Constitution for an efficient system of Free Schools in the State.

On motion of Mr. Pannell,

Resolved, That the Committee on Taxation and Finance be instructed to inquire into the expediency of providing for the levy of a poll-tax for the support of schools, in addition to any other tax which may be levied or assessed for such purposes.

On motion of Mr. Park,

Resolved, That the Committee on County Organization take into consideration the expediency of establishing County Courts in each County in this State.

On motion of Mr. Bee,

Resolved, That the Committee on Education inquire into the expedi-

being upon laying the report on the table, was put and decided in the affirmative.

The question then being upon making the report the order of the day for Monday, and being put, the President was unable to decide as to the result, and a division being called for, the President appointed Messrs. Brown and Johnson, (of Tyler,) to count the vote, who reported, ayes, 27, noes, 35. So the Convention decided to lay the report on the table, but refused to make it the special order of the day for Monday.

On motion of Mr. Campbell,

Resolved, That the Committee on the Legislative Department, be instructed to inquire into the expediency of so apportioning the representation of this State, that the House of Delegates be composed of thirty members, and the Senate be composed of sixteen members.

On motion of Mr. Hagans,

Resolved, That the Committee on the Bill of Rights and Elections, be requested to inquire into and report upon the expediency of providing that there shall be annually elected in every township of the several counties in this State, by the voters thereof, fifteen or more jurors who shall serve in such manner as may be prescribed by law, in turn, upon all petit juries and venirees, for the trial of all civil and criminal cases in the courts of such counties respectively.

Mr. Thompson offered the following, which, on his motion, was laid on the table:

Resolved, That the standing committees of this body inquire into the expediency of going into details on their several subjects, so as to define and limit the powers of the several departments of Government, instead of making general provisions, which, as heretofore practiced, have produced so much confusion in our government.

On motion of Mr. Davenport,

Resolved, That the Committee on the Legislative Department, be instructed to inquire into the expediency of incorporating into the Constitution the following provision:

“On the passage of every bill or joint concurrent resolution, the vote shall be taken by yeas and nays, and be entered on the Journal, and no bill or joint and concurrent resolution, shall be passed by either branch without the affirmative vote of a majority of the members elected thereto.

The vote shall be taken by yeas or nays, and be entered on the Journal upon the adoption of amendments proposed by one branch of the Legislature to bills passed by the other.

On motion of Mr. Crisswell,

Resolved, That the Committee on the Executive Department inquire into and report the expediency of incorporating into the Constitution, a provision to the effect that no person who has been elected to the office of Governor, shall, during the term for which he has been so elected, be a candidate for the office of United States Senator.

Mr. Woods, from the Committee on Bill of Rights and Elections, submitted the following report:

The Committee on the Bill of Rights and Elections, to which was referred the resolution of Mr. Hagans, requesting it to inquire into and report upon the expediency, among other things, of reporting a provision in the Constitution, making the carrying of concealed weapons a felony, punishable by imprisonment in the penitentiary for a period of not “less than five nor more than twenty years,” have had the same under consideration, and have instructed me to report that they deem it inexpedient to report such a provision in the Constitution.

SAMUEL WOODS, *Chairman*.

Mr. Johnson, (of Tyler,) raised a point of order upon the reception of the report, which was overruled by the President.

From which decision of the Chair, Mr. Johnson appealed; and the question being put, “Shall the opinion of the Chair stand as the opinion of the house,” was decided in the affirmative.

Mr. Moffett offered the following, which was adopted:

Resolved, That the number of miles allowed George H. Moffett for mileage, by the Committee on Mileage of Members, be changed from \$50 to \$30.

On motion of Mr. Johnson, (of Tyler,)

Resolved, That the Committee on the Legislative Department inquire into the expediency of inserting in the Constitution the following provision:

“The Legislature shall not have power to enact laws of a private character; but shall, under such regulations as it may impose by general law, provide, that all persons desiring relief from the operation of any law, may, by bill in chancery, obtain such relief as they may show themselves entitled to receive.”

On motion of Mr. Gallaher,

Resolved, That the Committee on County Organization inquire into the expediency of providing in the Constitution, that where two or more assessors are to be elected in one county, they be elected by the voters of their respective districts, instead of by the voters of the county at large, as at present.

On motion of Mr. Armstrong,

Resolved, That when the Convention adjourn, it adjourn to meet on Tuesday next at 2½ o'clock P. M.

sit with the Court, and assist in laying the county levy, and for their services shall receive \$2 per diem.

7. On every case brought before said Court the plaintiff or appellant shall pay a tax of \$2, which shall be paid to the Clerk before any proceedings are commenced, misdemeanor cases excepted, one dollar of which tax shall go to the Recorder as President of the Court, and fifty cents to each Justice, and said Recorder and Justices shall have no other compensation.

On motion of Mr. Miller,

Resolved, That the Committee on the Judiciary be directed to inquire into the expediency of the abolition of the office of Attorney General of this State.

Mr. Johnson, (of Wood,) from the Committee on the Executive Department, made the following special report, and asked that the Committee be discharged from further consideration of the subject, which was agreed to:

"The Committee on the Executive Department, to whom was referred a resolution requiring it to inquire into and report upon the expediency of incorporating into the Constitution a provision to the effect that 'no person who shall have been elected to the office of Governor shall, during the term for which he has been so elected, be a candidate for the office of United States Senator,' have had the same under consideration, and unanimously report that it is inexpedient to insert such a provision into the Constitution, we recognizing the right of every citizen in this republican government to be a *candidate* for office if he chooses.

OREY JOHNSON,
Chairman.

Mr. Johnson, (of Wood,) from the Committee on the Executive Department, made a report which,

On motion of Mr. Hoge, was laid on the table and ordered to be printed.

On motion of Mr. Travers,

Resolved, That on and after Monday, the fifth day of February, the Convention will meet at 10½ o'clock, A. M., and daily thereafter at the same hour until otherwise ordered.

Mr. Crisswell moved to amend by striking out "10½," and inserting "10" in lieu thereof, which amendment was agreed to, and the resolution, as amended, adopted.

On motion of Mr. Travers, the report of the Committee on Taxation, Finance, Education, &c., made on the 30th instant, was taken up; and on his further motion, the same was laid on the table and made the order of the day for Monday next.

On motion of Mr. Pipes,

Resolved, That the appropriate Committee inquire into the expediency of ingrafting a clause in the Constitution, defining the duties or responsibilities, or both, of Directors of Savings Banks or institutions in this State.

On motion of Mr. Bee,

Resolved, That the Committee on Land Titles inquire into the expediency of inserting a clause in the Constitution requiring that all lands shall be taxed in the counties in which such lands lie, and that lands lying in two or more townships or districts shall be taxed in the township or district in which the greater part of the land may be situated.

On motion of Mr. Smith, the Convention adjourned.

FRIDAY, FEBRUARY 2, 1872.

The Convention met pursuant to adjournment, and was opened with prayer by the Rev. J. A. Kibbe, of the Methodist Episcopal church.

After the Secretary had partly read the Journal of yesterday, on motion of Mr. Mathews, the further reading of the same was discontinued.

The President announced the following Committee under the resolutions offered by Mr. Wheat on yesterday, and adopted by the Convention:

Messrs. Wheat, Willey, Haymond, Maslin, Pearce, McCreery and Pate.

On motion of Mr. Bassel,

Resolved, That the Committee on the Legislative Department inquire into the expediency of incorporating the following provision in the Constitution, to be submitted separately:

"In order to settle, permanently, the seat of government of this State, the people may, at the election held for the adoption or rejection of this Constitution, vote for such places as they may deem proper for the seat of government, and the result of such vote shall be ascertained and returned in like manner, as the vote upon this Constitution. And if any place shall receive a majority of the votes cast, then such place shall be the permanent seat of government of this State. But if no place shall receive a majority of the votes cast, then at the first

Resolved, That eight hundred extra copies be printed of the report of the Committee of the Whole on the Legislative Department, in the mode heretofore prescribed for the printing of the reports of the Committee on Taxation and Finance, and that not less than ten copies be delivered to each member of the Convention: *Provided*, Such extra printing does not cost over fifteen dollars.

Mr. Faulkner, from the Committee on the Judiciary, made a report on the *second section* of the *second Article* of the proposed Constitution, as reported by the Committee on the Bill of Rights and Elections, which, on his motion, was laid on the table.

On motion of Mr. Fitzhugh, leave of absence for four days was granted to Mr. Knight.

On motion of Mr. Bee, leave of absence for four days was granted to Mr. Park.

On motion of Mr. Gallaher, leave of absence for ten days was granted to Mr. Miller.

On motion of Mr. Johnson, (of Wood,) the Convention resolved itself into Committee of the Whole, Mr. Brown in the chair, for the further consideration of the report of the Committee on the Executive Department.

After some time spent in Committee of the Whole, the President resumed the chair, and Mr. Brown reported that the committee had made some progress upon the matter referred to it, but had come to no conclusion thereon, and asked leave to sit again, which leave was granted.

On motion of Mr. Faulkner, the report of the Committee on the Judiciary, submitted by him this day, was ordered to be printed.

On motion of Mr. Campbell, the Convention took a recess until 2:30, P. M.

AFTERNOON SESSION.

The Convention re-assembled at 2:30, P. M.

On motion of Mr. Faulkner, leave of absence was granted to Mr. Allen for fifteen days.

On motion of Mr. Roberts, the Convention resolved itself into Committee of the Whole, Mr. Brown in the chair, for the further consideration of the report of the Committee on the Executive Department.

After some time spent in Committee of the Whole, the President resumed the chair, and Mr. Brown reported that the Committee had made some progress upon the matter referred to it, but had come to

no conclusion thereon, and asked leave to sit again, which leave was granted.

Mr. Campbell, offered the following which was adopted:

WHEREAS, Elder Myers, a minister and State Evangelist of the Christian Church, is now in this city; and,

WHEREAS, There is no place of worship belonging to that denomination in the city of Charleston, and there being a desire expressed to hear him,

Resolved, That the use of this hall be granted to him three evenings during the present week.

On motion of Mr. Campbell, the Convention adjourned.

TUESDAY, FEBRUARY 27, 1872.

The Convention met pursuant to adjournment, and was opened with prayer by the Rev. Mr. Barr, of the Presbyterian church; after which the Journal of yesterday's proceedings was read and approved.

On motion of Mr. Hagens, the Convention resolved itself into Committee of the Whole, Mr. Brown in the chair, for the further consideration of the report of the Committee on the Executive Department.

After some time spent in Committee of the Whole, the President resumed the chair, and Mr. Brown reported that the committee had made some progress upon the matter referred to it, but had come to no conclusion thereon, and asked leave to sit again, which leave was granted.

On motion of Mr. Wilson, leave of absence, for one week from Thursday next, was granted to Mr. Bassel.

On motion of Mr. Farnsworth, the Convention took a recess until 2:30, P. M.

AFTERNOON SESSION.

The Convention re-assembled at 2:30, P. M.

Mr. Faulkner offered the following, which, on his motion, was laid on the table.

Resolved, That a committee shall be appointed to whom shall be referred, for revision and proper arrangement, the articles of the Con-

out all of Section 4 Article III to the word "but," and insert in lieu thereof the following, viz:

"Any citizen entitled to vote may be elected or appointed to any office."

Mr. Faulkner moved to lay the resolution on the table.

Mr. Thompson demanded the ayes and noes. They were ordered and taken and the resolution laid on the table.

The ayes were:

Messrs. Armstrong, Arnett, Bassel, Bee, Brown, Byrne, Calfee, Crim, Davenport, Dickinson, Farnsworth, Faulkner, Ferguson, Fitzhugh, Hagans, Haymond, Hall, Haynes, Hoge, Holt, Jackson, (of Lewis,) Johnson, (of Wood,) Johnson, (of Tyler,) Kantner, Knight, Leonard, Martin, Maslin, Monroe, Morgan, McCleary, McCreery, Osburn, Park, Pate, Pearce, Pipes, Prince, Pugh, Randolph, Robinson, Roberts, Staton, Strickler, Stump, Thornburg, Wheat, Willey, Woods and Mr. President—50.

The noes were:

Messrs. Byrnside, Cushing, Ferrell, Jackson, (of Wood,) Lurty, Matthews, Miller, Pannell, Snider, Thompson, Waggener, Ward and Wilson—13.

On motion of Mr. Faulkner, the report of the Committee of the Whole on the report of the Committee on the

EXECUTIVE DEPARTMENT,

Was taken up.

SECTION 1.

The Convention agreed to the following amendments of the Committee of the Whole:

Striking out the words "Lieutenant-Governor" from the first and second lines.

Striking from the second and third lines the words "who shall perform the duties of."

Striking out all after the word "shall" in the fourth line to and including the word "qualified" in the sixth line, and inserting the words "be *ex-officio* reporter of the Court of Appeals, and whose terms of office shall be four years."

Striking out in 8th line the words "Lieutenant Governor and."

Striking out the word "there" in 11th line and inserting the words "pertaining to their respective offices."

SECTION 2.

Inserting after "Governor," in first line, the words "State Superintendent of Free Schools."

Striking out the words "Lieutenant Governor, Secretary of State," in 2d line.

Striking out of 4th and 5th lines the words "and every four years thereafter,"

SECTION 3.

Inserting after the word "votes," in the 10th line, the words "for the same office."

Striking out in 11th line the word "ballot" and inserting "vote."

Inserting after the word "of" in eleventh line, the word "such."

Striking out of twelfth line, the words "all of said officers," and inserting the words, "the office of Governor."

Striking out "ballot," in fourteenth line, and inserting "vote."

Adding at the end of this section the following:

"The Secretary of State shall be appointed by the Governor, by, and with the advice and consent of the Senate, and shall continue in office, unless sooner removed, until the expiration of the official term of the Governor by whom he was appointed."

SECTION 4.

Striking out all of this section preceding the word "neither," in the 4th line.

Striking out the words "Lieutenant-Governor, Secretary of State" from the 5th line, and inserting "State Superintendent of Free Schools."

Striking out after the word "shall" in the 6th line, the words "be eligible to," and inserting the word "hold."

Striking out from the 7th and 8th lines the words "the period for which he shall have been elected," and inserting "his term of service."

Striking from the 8th and 9th lines the words "and Lieutenant-Governor."

Striking out from the 9th and 11th lines the word "respectively."

Striking from the 11th and 12th lines "they were," and inserting "he was."

SECTION 7.

Striking out this section and inserting in lieu thereof the following:

"During any extraordinary session of the Legislature, convened by proclamation of the Governor, at his own instance, no business shall be transacted, except that for which they were called together."

SECTION 8.

Striking out this section.

SECTION 14.

Striking out this section.

SECTION 15.

Striking from this section all after the word "law," in the second line, and inserting:

"The Governor shall for such causes and in such manner as may be prescribed by law, require of such officer, reasonable additional security; and if the security is not given in such time as may be prescribed by law, his office shall become, and be declared vacant, in such manner as may be provided by law."

SECTION 17.

Striking out from 2d line the words "for distinct purposes," and inserting "embracing distinct items."

Striking out all of this section after the word "Governor" in the 3d line, and inserting the following:

"If he disapprove the bill, or any item or appropriation therein contained, he shall communicate such disapproval with his reasons therefor, to the House in which the bill originated; but all items not disapproved shall have the force and effect of law, according to the original provisions of the bill. Any item or items, so disapproved shall be void, unless re-passed by a majority of each House, according to the rules and limitations prescribed in the preceding sections in reference to other bills."

SECTION 18.

Striking out this section.

SECTION 19.

Striking out this section.

SECTION 20.

Striking out all of this section to and including the word "office," in the 4th line, and inserting:

"In case of the death, conviction on impeachment, failure to qualify, resignation or other disability of the Governor."

Adding at the end of the section the following:

"Whenever a vacancy shall occur in the office of Governor before the first three years of the term shall have expired, a new election for Governor shall take place to fill the vacancy."

SECTION 21.

Striking from the first line the words "Secretary of State" and inserting "State Superintendent of Free Schools."

Inserting after department in 8th line the words "except the Governor."

Inserting after the word oath in 11th line the words "or affirmation."

Inserting after "who" in 12th line the words "shall wilfully."

Striking out of 13th line the words "and punished accordingly."

SECTION 24.

Striking from 1st and 2d lines, the words "two thousand."

Striking out all after the words "per annum" in the 2d line down to and including the word "delegates in the 7th line, and inserting "no additional emolument, allowance or perquisite shall be paid or made on any account."

Mr. Wilson moved to amend the amendment of the Committee of the Whole, inserting "twenty-seven hundred" in the 2d line, by striking the same out, and inserting the words "twenty-two hundred and fifty," which was lost.

Mr. Lury moved to amend the same amendment, by striking out the word "seven" and inserting the word "five;"

Upon which, Mr. Thompson demanded the ayes and noes. They were ordered and taken, and the amendment lost.

The ayes were:

[MAR. 18.]

Messrs. Bassel, Bee, Crim, Farnsworth, Hagens, Hall, Jackson, (of Wood,) Kantner, Lurty, Martin, Miller, Monroe, Pate, Pearce, Randolph, Smith, Snider, Strickler, Stump, Wilson and Woods—21.

The noes were :

Messrs. Arnett, Brown, Byrnside, Byrne, Calfee, Cushing, Davenport, Dickinson, Faulkner, Ferguson, Ferrell, Fitzhugh, Haymond, Haynes, Hoge, Holt, Jackson, (of Lewis,) Johnson, (of Wood,) Johnson, (of Tyler,) Knight, Leonard, Maslin, Mathews, Morgan, McCleary, McCreery, Osburn, Pannell, Park, Pipes, Prince, Pugh, Robinson, Roberts, Staton, Thornburg, Thompson, Travers, Waggener, Ward, Wheat, Willey and Mr. President—43.

Mr. Osburn moved to amend the same amendment by striking out the words "twenty-seven hundred" and inserting "three thousand."

Upon which, Mr. Strickler demanded the ayes and noes. They were ordered and taken, and the amendment lost.

The ayes were :

Messrs. Brown, Davenport, Faulkner, Fitzhugh, Johnson, (of Tyler,) Knight, Mathews, Morgan, McCleary, Osburn, Pannell, Travers, Wheat and Mr. President—14.

The noes were :

Messrs. Arnett, Bassel, Bee, Byrnside, Byrne, Calfee, Crim, Cushing, Dickinson, Farnsworth, Ferguson, Ferrell, Hagens, Haymond, Hall, Haynes, Hoge, Holt, Jackson, (of Wood,) Jackson, (of Lewis,) Johnson, (of Wood,) Kantner, Leonard, Lurty, Martin, Maslin, Miller, Monroe, McCreery, Park, Pate, Pearce, Pipes, Prince, Pugh, Randolph, Robinson, Roberts, Smith, Snider, Staton, Strickler, Stump, Thornburg, Thompson, Waggener, Ward, Willey, Wilson and Wood—50.

SECTION 24.

Mr. Maslin moved to amend the amendment of the Committee of the Whole inserting the words "twenty-seven hundred," in the 2d line, by prefixing to the said amendment the words "not less than." The amendment to the amendment was lost. The amendment of the Committee of the Whole was then agreed to.

The Convention agreed to the following amendments of the Committee of the Whole, to the report of the Committee :

Striking out in eleventh line, the words "thirteen hundred," and

"One thousand ; the State Superintendent of Free Schools fifteen hundred."

Striking out the words "one thousand" in 14th line, and inserting, "thirteen hundred."

SECTION 25.

Striking out this section.

SECTION 26.

Striking out this section.

SECTION 1.

Mr. Wilson moved to amend the report by inserting after the word "General" in 9th line, "and State Superintendent of Free Schools ;"

Upon which Mr. Johnson, (of Wood,) demanded the ayes and noes. They were ordered and taken and the amendment lost.

The ayes were :

Messrs. Bassel, Bee, Brown, Cushing, Davenport, Farnsworth, Hagens, Holt, Knight, Lurty, Martin, Mathews, Pearce, Robinson and Wilson—15.

The noes were :

Messrs. Arnett, Boggs, Byrnside, Byrne, Calfee, Crim, Dickinson, Faulkner, Ferguson, Ferrell, Haymond, Hall, Haynes, Jackson, (of Wood,) Jackson, (of Lewis,) Johnson, (of Wood,) Johnson, (of Tyler,) Kantner, Leonard, Maslin, Miller, Monroe, McCleary, McCreery, Osburn, Pannell, Park, Pate, Pipes, Prince, Pugh, Randolph, Roberts, Smith, Snider, Staton, Strickler, Stump, Thornburg, Thompson, Travers, Waggener, Ward, Wheat, Willey, Woods and Mr. President—47.

Mr. Maslin moved to amend the report by striking out in the 8th and 9th lines these words "except the Attorney General."

The amendment was not agreed to.

SECTION 2.

Mr. Pipes moved to amend the report by inserting after the word "Treasurer" in the second line, the words "Secretary of State," which was lost.

SECTION 4.

Mr. Bee moved to amend the report by inserting after the word

"shall," in the sixth line, the words "be a negro, or mulatto, nor shall he."

Upon which he demanded the ayes and noes. They were ordered and taken and the amendment lost.

The ayes were:

Messrs. Bassel, Bee, Boggs, Byrnside, Crim, Cushing, Ferrell, Hall, Jackson, (of Lewis,) Johnson, (of Tyler,) Lurty, Maslin Mathews, Monroe, Morgan, Osburn, Pannell, Pate, Robinson, Staton, Thompson, Travers, Ward and Wilson—24.

The noes were:

Messrs. Arnett, Brown, Calfee, Davenport, Dickinson, Farnsworth, Faulkner, Ferguson, Fitzhugh, Hagans, Haymond, Haynes, Hoge, Holt, Jackson, (of Wood,) Johnson, (of Wood,) Kantner, Knight, Leonard, Martin, Miller, McCleary, McCreery, Park, Pendleton, Pipes, Prince, Pugh, Randolph, Roberts, Smith, Snider, Strickler, Stump, Thornburg, Wheat, Willey, Woods and Mr. President—39.

SECTION 16.

Mr. Hagans moved to amend the report by striking out this section; upon which he demanded the ayes and noes.

Mr. Jackson, (of Wood,) called for the previous question; which was sustained, and the main question ordered. The ayes and noes were then ordered and taken, and the amendment lost.

The ayes were:

Messrs. Dickinson, Farnsworth, Hagans, Kantner, Pate, Pipes, Waggener and Willey—8.

The noes were:

Messrs. Arnett, Bassel, Bee, Boggs, Brown, Byrnside, Byrne, Calfee, Crim, Cushing, Davenport, Faulkner, Ferguson, Ferrell, Fitzhugh, Haymond, Hall, Haynes, Hoge, Holt, Jackson, (of Wood,) Jackson, (of Lewis,) Johnson, (of Wood,) Johnson, (of Tyler,) Knight, Leonard, Lurty, Martin, Maslin, Mathews, Miller, Monroe, Morgan, McCleary, McCreery, Osburn, Pannell, Park, Pendleton, Prince, Pugh, Randolph, Robinson, Roberts, Smith, Snider, Staton, Strickler, Stump, Thornburg, Thompson, Travers, Ward, Wheat, Willey, Woods and Mr. President—57.

SECTION 24.

Mr. Davenport moved to amend the report by striking out the words

"fifteen hundred," in the 13th line, and inserting the words "two thousand."

Upon which Mr. Hagans demanded the ayes and noes. They were ordered and taken and the amendment adopted.

The ayes were:

Messrs. Arnett, Bassel, Boggs, Brown, Byrnside, Byrne, Crim, Cushing, Davenport, Dickinson, Faulkner, Ferguson, Fitzhugh, Hoge, Holt, Johnson, (of Tyler,) Knight, Leonard, Martin, Maslin, Mathews, Miller, McCleary, McCreery, Osburn, Pannell, Pendleton, Thornburg, Travers, Waggener, Warth, Wheat, Willey, Woods and Mr. President—35.

The noes were:

Messrs. Bee, Calfee, Farnsworth, Ferrell, Hagans, Haymond, Hall, Jackson, (of Wood,) Jackson, (of Lewis,) Johnson, (of Wood,) Kantner, Lurty, Monroe, Morgan, Park, Pate, Pipes, Prince, Pugh, Randolph, Robinson, Roberts, Smith, Snider, Staton, Strickler, Stump, Thompson, Ward and Wilson—30.

Mr. Wilson moved to re-consider the vote by which the Convention this day agreed to the amendment of the Committee of the Whole to the report of the Committee, inserting in 11th and 12th lines the words "one thousand; the State Superintendent of Free Schools fifteen hundred."

On motion of Mr. Johnson, (of Wood,) the motion was laid on the table.

Mr. Bassel moved to amend the report by adding at the end of Section 24 the following:

"And no additional allowance shall be appropriated or paid out of the treasury of the State to the Secretary of State, the Treasurer, the Auditor, the Attorney General or Superintendent of Free Schools by way of house rent or otherwise; except that the Superintendent of Free Schools may be allowed the expenses actually incurred by him in the necessary travel to perform the duties of his office which he shall keep and render an account in the manner prescribed by law."

Upon which he demanded the ayes and noes.

On motion of Mr. Hagans, the amendment was amended by striking therefrom the latter part thereof, which reads as follows:

"Except that the Superintendent of Free Schools may be allowed the expenses actually incurred by him in the necessary travel to perform the duties of his office of which he shall keep and render an account in the manner prescribed by law."

The question then being on Mr. Bassel's amendment as amended, the ayes and noes were ordered and taken and decided in the affirmative.

The ayes were:

Messrs. Arnett, Atkinson, Bassel, Bee, Boggs, Brown, Crim, Farnsworth, Ferrell, Hagans, Haymond, Hoge, Jackson, (of Wood,) Jackson, (of Lewis,) Johnson, (of Wood,) Johnson, (of Tyler,) Kantner, Leonard, Lurty, Martin, Maslin, Miller, Moffett, Morgan, McCleary, McCreery, Osburn, Park, Peerce, Pipes, Pugh, Randolph, Robinson, Smith, Snider, Staton, Strickler, Stump, Thompson, Waggener, Ward, Willey, Wilson, Woods and Mr. President—45.

The noes were:

Messrs. Byrne, Ferguson, Pannell, Roberts, Thornburg, Warth and Wheat—7.

On motion of Mr. Davenport, the Convention took a recess until 2:30, P. M.

AFTERNOON SESSION.

The Convention re-assembled at 2:30, P. M., and resumed the consideration of the report of the Committee of the Whole on the report of the Committee on the Executive Department.

Mr. Bee moved to reconsider the vote by which the Convention refused to amend the report, on the motion of Mr. Wilson, to insert after the word "general" in the ninth line of first section, the words "and State Superintendent of Free Schools."

On motion of Mr. Johnson, (of Wood,) Mr. Bee's motion was laid on the table.

On motion of Mr. Haymond, the report was amended by inserting after the word "years" in the 8th line, the following:

"And the terms of their respective offices shall commence on the fourth day of March next, after their election."

SECTION 11.

On motion of Mr. Johnson, (of Wood,) the report was amended by inserting after the word "duty" in the 2d line, these words "or gross immorality."

SECTION 24.

On motion of Mr. Johnson, (of Wood,) the report was amended by inserting after the word "made" in the 8th line, the words "to him."

Mr. Byrne moved to reconsider the vote by which Mr. Wilson's motion made this morning, to reconsider the vote by which the Convention agreed to the amendment of the Committee of the Whole, inserting in the 11th and 12th lines of Section 24, the words "one thousand, the State Superintendent of Free Schools fifteen hundred," was laid on the table. The vote was reconsidered.

The question then being on laying Mr. Wilson's motion on the table was decided in the negative.

The question then being, on Mr. Wilson's motion to reconsider, was decided in the affirmative.

Mr. Byrne moved to amend the amendment of the Committee of the Whole, by striking out the words "fifteen hundred" in the 12th line, and inserting "two thousand."

On motion of Mr. Jackson, (of Lewis,) the question was divided.

The question then being on striking out, Mr. Smith demanded the ayes and noes.

Mr. Ward moved to lay the motion and the report on the table. Lost.

Mr. Jackson, (of Wood,) called for the previous question, which was sustained, and the main question ordered.

The ayes and noes were then ordered and taken, and the motion to strike out, lost.

The ayes were:

Messrs. Atkinson, Bassel, Brown, Byrne, Faulkner, Hagans, Hoge, Holt, Jackson, (of Wood,) Kantner, Knight, Lurty, Mathews, Miller, Moffett, McCleary, Travers, Warth, Wheat, Willey and Wilson—21.

The noes were:

Messrs. Arnett, Bee, Boggs, Byrnside, Calfee, Crim, Cushing, Davenport, Farnsworth, Ferguson, Ferrell, Haymond, Hall, Jackson, (of Lewis,) Johnson, (of Wood,) Johnson, (of Tyler,) Leonard, Martin, Maslin, Monroe, Morgan, McCreery, Osburn, Pannell, Park, Pate, Peerce, Pipes, Prince, Pugh, Randolph, Robinson, Roberts, Smith, Snider, Staton, Strickler, Stump, Thornburg, Thompson, Waggener, Ward and Woods—43.

SECTION 6.

On motion of Mr. Hagans, the report was amended by striking out from the second line, the words "and at the close of his term of office." 13—C.J.

SECTION 1.

Mr. Leonard moved to amend the amendment of the Committee of the Whole, by inserting in the 16th line before the word "cemeteries" the word "public," which was not agreed to.

SECTION 3.

Mr. Peerce moved to amend the report by striking out in the first and second lines, the words "one dollar" and inserting the words "not less than one nor exceeding two dollars."

Upon which he demanded the ayes and noes.

Pending the consideration of which, Mr. Price, of Greenbrier, arose and announced the death of Colonel Beuhring H. Jones, one of the Assistant Secretaries of the Convention, and offered the following resolutions, which were unanimously adopted:

WHEREAS, Col. B. H. Jones, Assistant Secretary of this Convention, has departed this life in the midst of his years, and the matured strength of his intellect; and

WHEREAS, It is proper for us to pause and note the admonition proclaimed by this sad event; therefore be it

Resolved, That in the death of Col. Jones, this Convention has lost an efficient officer, the State a patriotic citizen, society an esteemed member, the bar an upright attorney, and the church an exemplary christian.

Resolved, That our earnest sympathy is hereby tendered to the family of the deceased, and while we may not extinguish the pain of bereavement we would express our condolence for their irreparable loss.

Resolved, That the Secretary of the Convention be directed to forward the family a copy of the foregoing preamble and resolutions duly attested.

Resolved, That the Convention will attend his funeral in a body, as an additional testimonial of respect for his memory.

On motion of Mr. Byrnside,

Resolved, That as a further testimony of our respect for the deceased, this Convention do now adjourn until to-morrow morning at 10 o'clock.

On motion of Mr. Mathews, the report was referred to the Committee on Revision.

Mr. Atkinson offered the following resolution, which was referred to the Committee on Printing:

Resolved, That the clerk be directed to have printed a further supplement of the report of the Committee on Taxation and Finance Corporations and Education, on the subject of free common schools, so as to supply each member with a copy; and that hereafter the several reports of Standing Committees shall be divided equally among the members.

On motion of Mr. Davenport,

Resolved, That the Committee to whom was referred the preparation of a schedule, take into consideration the expediency of incorporating into the schedule to the new Constitution the following: All existing courts, which are not in this Constitution specifically enumerated, shall continue in existence and exercise their present jurisdiction until otherwise provided by law.

On motion of Mr. Thompson, the Convention adjourned.

TUESDAY, MARCH 19, 1872.

The Convention met pursuant to adjournment, and was opened with prayer by the Rev. Mr. Barr, of the Presbyterian church, after which the Journal of Saturday's proceedings was read and approved.

Mr. Wilson offered the following resolution, which, on motion of Mr. Johnson, (of Wood,) was laid on the table:

Resolved, That the Committee on Revision be, and they are hereby, instructed to insert in Section 24 of Article —, on Executive Department, a provision allowing the State Superintendent of Free schools necessary traveling expenses whilst absent from the seat of government in discharge of duties prescribed by law.

On motion of Mr. Faulkner, the report of the Committee of the Whole on the report of the Committee on "Taxation, Finance, Corporations and Education," on the subject of

TAXATION AND FINANCE,

Was taken up.

wisburg and return, to accompany the remains and family of the late Col. B. H. Jones, late Assistant Secretary of this Convention; and that this allowance be certified to the Auditor of Public Accounts for payment.

Mr. Robinson offered the following resolution; which,

On motion of Mr. Haymond, was laid on the table.

Resolved, That the Secretary, Assistant Secretaries, Sergeant-at-Arms and Doorkeeper be allowed the same mileage as members of the convention."

Messrs. Hall and Calfee, by leave, recorded their votes in favor of the independent section offered by General Wheat, and adopted on the 4th instant.

UNFINISHED BUSINESS OF YESTERDAY.

The Convention resumed the consideration of the report of the Committee on the Schedule.

SECTION 20.

The pending question being the motion of Mr. Pipes to amend the report by striking out this section; the motion prevailed.

SECTION 6.

On motion of Mr. Johnson (of Tyler,) the report was amended by striking out all this section after "1872" in the 8th line.

Mr. Strickler moved to amend the report by striking out all this section after "law," in the 2d line.

The amendment was not agreed to.

On motion of Mr. Bassel, the report was amended by inserting the following additional section:

"The Judges of the circuit courts under the existing Constitution of this State, shall continue to discharge the duties of their offices in their several circuits until the 1st day of January, 1878."

Mr. Travers moved to amend the report by inserting the following additional section:

At the time of the submission of this Constitution, there shall be submitted as a separate section, the following resolution:

"In all elections by the people, the votes shall be personally and publicly given *viva voce*; *Provided*, that dumb persons entitled to suffrage may vote by ballot," and the mode of voting on the said proposition shall be by ballot, which shall have written or printed thereon

"For voting *viva voce*." Should there be a majority of all votes cast for and against the ratification of the Constitution, in favor of the said method of voting, the foregoing proposition shall be substituted for and in lieu of Section two of Article four of this Constitution."

Upon which he demanded the ayes and noes. They were ordered and taken, and the amendment adopted.

The ayes were:

Messrs. Armstrong, Bassel, Bee, Byrne, Calfee, Crim, Cushing, Davenport, Dickinson, Faulkner, Fitzhugh, Harding, Hoge, Holt, Jackson, (of Lewis,) Johnson, (of Wood,) Johnson, (of Tyler,) Leonard, Martin, Maslin, Morgan, McCleary, McCreery, Osburn, Prince, Robinson, Roberts, Smith, Staton, Stump, Thompson, Travers, Warth, Wilson, Woods and Mr. President—36.

The noes were:

Messrs. Arnett, Atkinson, Campbell, Core, Crisswell, Farnsworth, Ferguson, Ferrell, Gallaher, Hagans, Haymond, Hall, Haynes, Jackson, (of Wood,) Kantner, Lurty, Miller, Park, Pendleton, Pipes, Snider, Strickler, Thornburg, Waggener and Wheat—26.

On motion of Mr. Travers, the report was then referred to the Committee on Revision.

Mr. Campbell offered the following resolution; which,

On motion of Mr. Morgan, was laid on the table:

Resolved, That the thanks of this Convention, and the people of West Virginia, are due to Col. Morgan, Gov. D. D. T. Farnsworth and Major George O. Davenport, for their efforts to save the "Old Flag" when the Convention Hall was in flames, and that each be presented with a gilt edged copy, bound in Turkey Morocco, of the old and glorious song of "Rally round the Flag boys! Rally one and all!!"

On motion of Mr. Gallaher,

Resolved, That the Governor be requested to have printed and distributed, in the German language, a sufficient number of copies of his proclamation, with the Constitution and Schedule annexed, to supply the wants of the German citizens of this State.

Mr. Wilson moved to take up the majority and minority report of the special Committee of nine, on the subject of the removal of the seat of government; the motion was not agreed to.

On motion of Mr. Faulkner, the 5th, 6th, 7th and 8th Articles of a Constitution of West Virginia, the 5th embracing the subject of "Division of Powers;" the 6th embracing the subject of the "Legislature;" the 7th embracing the subject of the "Executive Department,"

[APRIL 6.]

and the 8th embracing the subject of the "Judiciary Department," as reported by the Committee on Revision, were taken up.

ARTICLE 6.

SECTION 3.

On motion of Mr. Haymond, this article was amended by striking from the 6th line of Section 3, the word "officers" and inserting "seat."

SECTION 33.

Mr. Wheat moved to amend this article by striking from the 2d line of this section the word "three" and inserting "four;" upon which he demanded the yeas and noes. They were ordered and taken, and the amendment adopted.

The yeas were:

Messrs. Arnett, Atkinson, Bassel, Boggs, Byrne, Campbell, Crisswell, Cushing, Davenport, Dickinson, Ferguson, Fitzhugh, Gallaher, Hagans, Holt, Johnson, (of Tyler,) Knight, Maslin, Mathews, Miller, McCleary, McCreery, Osburn, Pannell, Peerce, Pendleton, Pipes, Prince, Pugh, Robinson, Travers, Waggener, Warth, Wheat and Mr. President—35.

The noes were:

Messrs. Bee, Calfee, Core, Crim, Farnsworth, Faulkner, Ferrell, Haymond, Hall, Harding, Haynes, Hoge, Jackson, (of Wood,) Jackson, (of Lewis,) Johnson, (of Wood,) Leonard, Lurty, Martin, Monroe, Morgan, Park, Pate, Roberts, Smith, Snider, Staton, Strickler, Stump, Thornburg, Thompson, Wilson and Woods—32.

ARTICLE 6.

SECTION 45.

On motion of Mr. Ward, this article was amended by striking from the 6th line of this section the words "public or," and inserting after "official" in same line, the words "or public."

SECTION 19.

Mr. Wheat moved to amend the article, by inserting after "duty" in 3d line, the words "or upon his refusal, by any Judge of the Supreme Court of Appeals."

SECTION 18.

On motion of Mr. Johnson, (of Tyler,) the article was amended by striking from the 4th line of this section the words "day of" and inserting "third Tuesday in November;" and by striking from the 6th line of the same section the words "day of" and inserting "second Wednesday in January."

On motion of Mr. Strickler, the article was amended by inserting after the word "January" in the 6th line of this section "1875."

The said 5th and 6th articles were then ordered to be engrossed and read a third time.

ARTICLE 7.

EXECUTIVE DEPARTMENT.

SECTION 19.

On motion of Mr. Bassel, this article was amended by inserting after the word "made" in the 10th line of this section the words "out of the Treasury of the State."

On motion of Mr. Travers this section was amended by inserting after the word "perquisite" in the 10th line the words "except as herein otherwise provided."

On motion of Mr. Haymond, this section was amended by inserting after the word "emolument" in the 10th line the word "or," and by striking from the same line the words "or perquisite."

The said seventh article was then ordered to be engrossed and read a third time.

On motion of Mr. Haymond, the Convention took a recess until 2:30, p. m.

AFTERNOON SESSION.

The Convention re-assembled at 2:30, p. m., and resumed the consideration of the 8th article of the Constitution as reported by the Committee on Revision, being on the Judiciary Department.

SECTION 17.

Mr. Osburn moved to amend the section by striking from the 2d line the words "two thousand" and inserting "twenty-two hundred and fifty."

Mr. Thornburg called for the previous question and it was ordered.

Mr. Bee demanded the ayes and noes. They were ordered and taken and the amendment adopted.

The ayes were:

Messrs. Armstrong, Atkinson, Bassel, Boggs, Byrnside, Byrne, Campbell, Crisswell, Davenport, Dickinson, Faulkner, Fitzhugh, Hoge, Holt, Johnson, (of Wood,) Johnson, (of Tyler,) Knight, Leonard, Mathews, Miller, Morgan, McCleary, McCleary, Osburn, Pearce, Pendleton, Pipes, Prince, Robinson, Roberts, Thornburg, Travers, Waggener, Wheat and Mr. President—35.

The noes were:

Messrs. Arnett, Bee, Calfee, Core, Crim, Ferguson, Ferrell, Gallagher, Hagans, Haymond, Harding, Haynes, Jackson, (of Wood,) Jackson, (of Lewis,) Lurty, Martin, Maslin, Monroe, Park, Smith, Snider, Staton, Strickler, Stump, Thompson, Wilson and Woods—27.

SECTION 33.

Mr. Wilson moved to amend this section by striking from the 6th line the words "made at any time before trial," and inserting "upon the return of the summons."

Not agreed to.

SECTION 12.

On motion of Mr. Knight, this was amended by inserting after *habeas corpus* in the 19th line "*quo warranto*."

SECTION 14.

Mr. Jackson, (of Lewis,) moved to amend this section by striking from the 9th line the word "Preston," and inserting it after "Pendleton" in the 6th line; upon which

Mr. Pearce demanded the ayes and noes. They were ordered and taken and the amendment lost.

The ayes were:

Messrs. Bee, Byrne, Core, Dickinson, Jackson, (of Lewis,) Leonard, Lurty, Miller, Park, Smith, Strickler, Thompson, Waggener, Ward and Wilson—15.

The noes were:

Messrs. Armstrong, Arnett, Atkinson, Boggs, Byrnside, Campbell, Calfee, Crim, Crisswell, Cushing, Davenport, Farnsworth, Faulkner, Ferguson, Ferrell, Fitzhugh, Gallagher, Hagans, Haymond, Hall, Harding,

ing, Haynes, Hoge, Holt, Jackson, (of Wood,) Johnson, (of Wood,) Johnson, (of Tyler,) Kantner, Martin, Mathews, Monroe, Morgan, McCleary, McCleary, Osburn, Pannell, Pate, Pearce, Pendleton, Pipes, Prince, Pugh, Robinson, Roberts, Snider, Staton, Stump, Thornburg, Travers, Wheat, Woods and Mr. President—52.

SECTION 35.

Mr. Wilson moved to amend this section by adding at the end thereof the following:

"This section is only to affect final judgments rendered in which defendants have not had the benefit of a plea or other defence, so as to set up and rely upon their participation in such war in pursuance of the usages of civilized warfare, as to give them the benefit of a new trial in such case."

Upon which Mr. Pannell demanded the ayes and noes. They were ordered and taken and the amendment lost.

The ayes were:

Messrs. Atkinson, Crisswell, Farnsworth, Hagans, Lurty, Pipes, Pugh, Snider and Wilson—9.

The noes were:

Messrs. Armstrong, Arnett, Bee, Byrnside, Byrne, Campbell, Calfee, Core, Crim, Cushing, Davenport, Dickinson, Faulkner, Ferguson, Ferrell, Gallagher, Hall, Harding, Haynes, Hoge, Jackson, (of Wood,) Johnson, (of Wood,) Johnson, (of Tyler,) Leonard, Martin, Maslin, Mathews, Miller, Monroe, Morgan, McCleary, McCleary, Osburn, Pannell, Pate, Pendleton, Prince, Robinson, Roberts, Staton, Strickler, Stump, Thornburg, Thompson, Travers, Waggener, Ward, Wheat, Woods and Mr. President—50.

The article was then ordered to be engrossed and read a third time.

The ninth article of said Constitution as reported by the Committee on Revision, being on the subject of

COUNTY ORGANIZATION,

was taken up on its second reading.

SECTION 1.

On motion of Mr. Wilson this section was amended by striking out all after the word "years" in the 4th line.

The article was then ordered to be engrossed, and read a third time.

debts or liabilities of any city, town, township, corporation or person.]

[43. The Legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State, or to any municipal corporation.]

44. Each House shall keep a Journal of its proceedings, and cause the same to be published from time to time "*and all bills and joint resolutions shall be described therein, as well by their title as their number,*" and the yeas and nays on the question, if called for by one-tenth of those present, shall be entered on the journal.

45. Bills making appropriations for the pay of members and officers of the Legislature, and for salaries for the officers of the Government shall contain no provision on any other subject.

"46. The Legislature shall never authorize to establish any board or court of Registration of voters."

"47. Neither House of the Legislature, nor any county or municipal authorities, nor any other public representative body, shall vote by ballot or in any other secret manner."

JAMES M. JACKSON,
Chairman.

Feb. 24th, 1872.

REPORT OF THE "COMMITTEE OF THE WHOLE" ON THE
REPORT OF THE COMMITTEE ON THE EXECUTIVE DEPARTMENT.

The words included in brackets, thus [] were struck out of the original text, in Committee of the Whole, and the words in italics inserted.

ARTICLE —

EXECUTIVE DEPARTMENT.

1. The executive department shall consist of a Governor, [Lieutenant Governor,] Secretary of State, [who shall perform the duties of,] State Superintendent of Free Schools, Auditor, Treasurer, and Attorney General, who shall [each hold his office for the term of four years from the second Monday of January next after his election, and until his successor is elected and qualified,] *be ex-officio reporter of the Court of Appeals, and whose terms of office shall be four years.* They shall, except the [Lieutenant Governor and] Attorney General, reside at the seat of government during their term of office. and keep *there* the public records, books and papers [there] "*pertaining to their respective offices,*" and shall perform such duties as may be prescribed by law.

ELECTION.

2. An election for Governor, *State Superintendent of Free Schools* [Lieutenant Governor, Secretary of State,] Auditor, Treasurer and Attorney General shall be held at such times and places as may be prescribed in this constitution or by general law, [and every four years thereafter.]
- 3 The returns of every election for the above named officers

shall be sealed up and transmitted by the returning officers to the Secretary of State, directed to "The Speaker of the House of Delegates," who shall immediately after the organization of the House, and before proceeding to business, open and publish the same in the presence of a majority of each House of the Legislature, who shall for that purpose assemble in the hall of the House Delegates. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more have an equal and the highest number of votes for the same office, the Legislature shall, by joint [ballot] vote choose one of such persons for said office. Contested elections for [all of said offices] the office of Governor shall be determined by both Houses of the Legislature by joint [ballot] vote, in such manner as may be prescribed by law.

"x. The Secretary of State shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall continue in office unless sooner removed, until the expiration of the official term of the Governor by whom he was appointed."

ELIGIBILITY.

4. [No person shall be eligible to the office of Governor or Lieutenant Governor who shall not have attained the age of thirty years, and been for five years next preceding his election a citizen of the United States and of this State.] Neither the Governor, [Lieutenant Governor, Secretary of State,] State Superintendent of Free Schools, Auditor, Treasurer nor Attorney General, shall [b]

7 eligible to] hold any other office during [the period for which he shall have been elected,] his term of service. The Governor [and Lieutenant Governor] shall be ineligible to said office [respectively] for four years next succeeding the term for which [they were] he was elected.

GOVERNOR.

5. The chief executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed.

6. The Governor shall, at the commencement of each session, and at the close of his term of office, give to the Legislature information by message, of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall account to the Legislature, and accompany his message with a statement of all money received and paid out by him from any funds subject to his order, with vouchers, and at the commencement of each regular session, present estimates of the amount of money required to be raised by taxation for all purposes.

[7. The Governor may, on extraordinary occasions, convene the Legislature, by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.]

7. During any extraordinary session of the Legislature, convened by proclamation of the Governor, at his own instance, no business shall be transacted except that for which they were called together.

[8. In case of a disagreement between the two Houses with respect to the time of adjournment, the Governor may, on the same

ing certified to him by the House first moving the adjournment, return the Legislature to such time as he thinks proper, not before the first day of the next regular session.]

1. The Governor shall nominate, and by and with the advice and consent of the Senate (a majority of all the senators elected concurring by yeas and nays,) appoint all officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for, and such officers shall be appointed or elected by the Legislature.

10. In case of a vacancy, during the recess of the Senate, in any office which is not elective, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some person to fill such office, and any person so nominated, who is confirmed by the Senate, (a majority of all the senators elected concurring by yeas and nays,) shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the Senate, shall be again nominated for the same office at the same session, unless at the request of the Senate, or be appointed to the same office during the recess of the Legislature.

11. The Governor shall have power to remove any officer whom he may appoint, in case of incompetency, neglect of duty, or malfeasance in office; and he may declare his office vacant, and fill the same as herein provided in other cases of vacancy.

12. The Governor 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.

13. The Governor shall be commander-in-chief of the military forces of the State (except when they shall be called into the service of the United States), and may call out the same to execute the laws, suppress insurrection and repel invasion.

[14. The Governor and all civil officers of this State shall be liable to impeachment for any misdemeanor in office.]

15. When any State officer has executed bond as required by law, [the Governor shall, whenever the public interest demands it, require of such officer reasonable additional security, and if it is not given his office shall be deemed vacant.] "*the Governor shall, for such causes, and in such manner as may be prescribed by law, require of such officer reasonable additional security; and if the security is not given, in such time as may be prescribed by law, his office shall become, and be declared vacant, in such manner as may be provided by law.*"

VETO.

16. Every bill passed by the Legislature shall before it becomes

law, be presented to the Governor. If he approves, he shall sign it, and thereupon it shall become a law; but if he do not approve he shall return it, with his objections, to the House in which it shall have originated, which House shall enter the objections at large upon its journal, and may proceed to reconsider the bill. If a majority of the members elected to that House agree to pass the same, it shall be sent together with the objection to the other House, by which it shall likewise be reconsidered, and if approved by a majority of the members elected to that House, it shall become a law, notwithstanding the objections of the Governor. But in all such cases the vote of each House shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the Governor within five days (Sundays excepted,) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall be filed with his objections in the office of the Secretary of State, within five days after such adjournment, or become a law.

17. Every bill passed by the Legislature, making appropriations of money [for distinct purposes,] "*embracing distinct items*," shall, before it becomes a law, be presented to the Governor; [if he approves it, or any of the items therein contained, it or the items so approved shall become a law; but if he do not approve it, or if he

shall return it, with his

objections thereto, to the House in which it shall have originated and before it, or the items, or item, so disapproved shall become a law, it shall be repassed by a majority of all the members elected to both Houses, according to the rules and limitations prescribed in the preceding sections in reference to other bills.] "*If he disprove the bill, or any item or appropriation therein contained, he shall communicate such disapproval, with his reasons therefor, to the House in which the bill originated; but all items not disapproved shall have the force and effect of law, according to the original provisions of the bill. Any item, or items, so disapproved shall be void, unless re-passed by a majority of each House, according to the rules and limitations prescribed in the preceding sections in reference to other bills.*"

LIEUTENANT GOVERNOR.

[18. In case of the death, conviction on impeachment, failure to qualify, resignation or other disability of the Governor, the powers, duties and emoluments of the office, for the residue of the term or until the disability shall be removed, shall devolve upon the Lieutenant Governor.]

[19. The Lieutenant Governor shall be President of the Senate and shall vote only when the Senate is equally divided. The Senate shall choose from their own body a President *pro tempore*, to preside in case of the absence or impeachment of the Lieutenant Governor, or when he shall hold the office of Governor.]

[20. If there be no Lieutenant-Governor, or if the Lieutenant-Governor, for any of the causes specified in section eighteen of

this article, becomes incapable of performing the duties of the office,] "In case of the death, conviction, or impeachment, failure to qualify, resignation or other disability of the Governor," the President of the Senate shall sit as Governor until the vacancy is filled or the disability removed; and if the President of the Senate, for any of the above named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House of Delegates; and in all other cases where there is no one to act as Governor, one shall be chosen by joint ballot of the Legislature.

"Whenever a vacancy shall occur in the office of Governor before the first three years of the term shall have expired, a new election for Governor shall take place to fill the vacancy."

OTHER STATE OFFICERS.

21. If the office of Auditor, Treasurer, [Secretary of State,] "State Superintendent of Free Schools," or Attorney General shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.

An account shall be kept by the officers of the Executive Department, "except the Governor," and of all the public institutions of the State, of all moneys received or disbursed by them severally from all sources, and for every service performed, and a semi-annual report thereof be made to the Governor, under oath "or affirmation," and any officer who "shall wilfully" make a false report, shall be guilty of perjury [and punished accordingly.]

22. The officers of the Executive Department, and of all the public institutions of the State, shall, at least ten days preceding each regular session of the Legislature, severally report to the Governor, who shall transmit such reports to the Legislature, and the Governor may at any time require information in writing, under oath, from the officers of the Executive Department, and all officers and managers of State institutions, upon any subject relating to the condition, management and expenses of their respective offices.

THE SEAL OF STATE.

23. The present seal of the State with its motto, "Montani Semper Liberi," shall be the great seal of the State of West Virginia, which shall be kept by the Secretary of the State, and used by him officially as directed by law.

SALARIES OF OFFICERS.

24. The Governor shall receive for his services a salary of [two thousand] "twenty-seven hundred" dollars per annum, [together with an additional compensation of one thousand dollars per year in lieu of house rent, until the Legislature provide and furnish an Executive mansion. The Lieutenant-Governor, while acting as president of the senate, shall receive for his services the same compensation as the Speaker of the House of Delegates;] "and no additional emolument, allowance, or perquisites shall be paid or made on any account;" and any person acting as Governor shall receive the emoluments of that office.

The Secretary of State shall receive [thirteen hundred,] "one thousand, the "State Superintendent of Free Schools, fifteen hundred,"

Treasurer fourteen hundred, the Auditor fifteen hundred, and Attorney General, [one thousand] "*thirteen hundred*" dollars annuum.

DEFINITION AND OATH OF OFFICE.

5. An office is a public position created by the Constitution or law, continuing during the pleasure of the appointing power or for a fixed time, with a successor elected or appointed.

An employment is an agency for a temporary purpose, which ceases when that purpose is accomplished.]

6. All civil officers, except members of the Legislature and inferior officers as may be by law exempted, shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation :

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of West Virginia; and that I will faithfully discharge the duties of the office ofaccording to the best of my ability."

And no other oath, declaration or test shall be required as a qualification.]

[OKEY JOHNSON, *Chairman*.]

WM. G. BROWN,

Chairman Committee of the Whole.

REPORT OF THE COMMITTEE OF THE WHOLE.

JUDICIAL ORGANIZATION.

The Committee of the Whole to whom was referred the report of the Committee on the Judicial Organization of the State, have had the same under consideration, and report the same back to the Convention, with such amendments as were agreed to in said Committee of the Whole.

The words included in brackets, thus, [] were stricken out in Committee of the Whole, and the words in *italics* inserted.

1. The judicial power shall be vested in a supreme court of appeals and in circuit courts, and the judges thereof; in the county and corporation courts, and in the justices of the peace.

SUPREME COURT OF APPEALS.

2. The supreme court of appeals shall consist of four judges, any three of whom shall be a quorum. They shall be elected by the voters of the State, and shall hold their office for the term of twelve years, unless sooner removed in the manner prescribed by this constitution.

3. It shall have original jurisdiction in cases of *habeas corpus*, *mandamus*, and *prohibition*. It shall have appellate jurisdiction in civil cases where the matter in controversy, exclusive of costs, is of greater value or amount than one hundred dollars; in contro-

Page 2

DAILY

BY MORNING

Publishing Co.

WEST VA.

OF THE K.

PRESIDENT.

OUN, SECRETARY

ANASWEN.

YER.

ENO.

BOUR.

ITE.

WALKER.

UGHES, BUSINESS

and Editorial

AWHA DAILY, is

New Hotel.

MAY 28, 1872.

Schools.

question, pro-

ago to Coun-

Bibby, was

gentlemen yes-

somewhat sur-

second perusal

comprehension

ign document,

the official re-

venue will be

proper officers

en themselves

de up of the

have, or have

in itself im-

mation may,

it.

intention of

ice to all, and

hereinafter stated, gave us good reason to believe would be the case. With a brief statement of the present financial condition of the city made up from the best information we have, or have been able to obtain, we leave the matter with the tax-payers of the city to say whether or not we are justified in the course we have pursued.

From the DAILY of February 6th, we find the whole amount of bonds issued due May 1st, 1876, amounts to the sum of - \$25,800 00

Bonds to be issued for condemned property, - 1,300 00

Am't bonds issued and to be issued, - \$27,200 00

In addition, the city owes the Kanawha Valley Bk on short notes about the sum of - 16,000 00

First National Bank - 4,957 00

And we are sure that the floating debt will amount to at least the sum of - 2,500 00

Making the present indebtedness of the city - \$50,657 10

In addition, the levies of last year were as follows:

Capitation tax on 750 at \$1 each, - 750 00

City property at 75c on the \$100 valuation, - 11,476 66

395 dogs, at \$1 each - 395 01

25c on \$100 valuation for gas purposes - 3,825 37

20c on the \$100 valuation for schools - 3,060 29

We further estimate that there has been received from licenses of all kinds at least - 2,000 00

From wharfage, say - 1,000 00

From fines, say - 1,000 00

Making a grand total of city expenditures for the year 1871, of - \$74,103 10

In addition to the above items, the school fund has received from the State between nine hundred and one thousand dollars.

We should have preferred that the above financial statement should have been left to be made out by the proper parties, but having been called on, as before stated, to give our reasons for our demand vote, we have deemed it but justice to ourselves to give the public the best information we have on the subject. Hoping that this explanation may be satisfactory, we leave the matter with the citizens of the city.

JOHN D. WHITE.

JOA. BIBBY.

THE CONVENTION.

CHARLESTON, W. VA., February 24, 1872.

The Convention met pursuant to adjournment, after which the journal of yesterday's proceedings was read and approved.

The President laid before the Convention a communication and

MORNING SESSION.

February 20th, 1872.

The Convention met at 11 A. M. No Minister present to offer prayer.

Mr. Pipes presented a report of the probable cost of holding the Convention on the basis of a ninety days' session.

A motion was made to lay on the table.

Mr. Pipes moved to amend by certifying a copy to the Speaker of the House.

Mr. Johnson, of Tyler, thought the expense of fitting up the Convention hall (\$700) very enormous.

Mr. Hazans, one of the committee on expenses, informed the gentleman that he had seventeen vouchers, properly certified, that would verify the report. It must be recollected that this included chairs, gas-fittings, carpeting, etc., for both the hall and the committee rooms.

Mr. Raymond moved a division of the question.

The motion to lay on the table was carried.

Mr. President—Shall it be certified?

Mr. Pipes said the committee had deferred making the report to this very late day in order to best ascertain the probable length of time the Convention would be in session. The Legislature are soon to adjourn and it was necessary that the report go before that body in order to have the appropriation made.

The motion was carried.

Mr. Faulkner was desired by the Committee on the Judiciary to make the accompanying report, and he moved to commit to the Committee of the Whole. Carried.

Mr. Johnson, of Wood, asked leave of absence for Col. Jackson for one week.

Mr. ——— offered the following:

Resolved, That \$800 extra copies of the report of the Committee on the Legislative Department be printed on the same basis as was the report on taxation and finance, so that each member can have at least ten copies.

Mr. Wheat would amend so that the expense should not exceed \$15.

Mr. Mathews moved to amend so as to include the report of the Committee on the Judiciary, provided the whole expense should not exceed \$30. He was informed that the type of the first report was still in the "forms," while the latter had been "distributed."

Mr. Mathews changed his amendment so as that the expense of each should not exceed \$15.

Lost, and the original resolution carried.

Mr. Faulkner presented a report

he words "Lieutenant Governor," in the original text.

Mr. Johnson, (of Tyler,) accepted and spoke at length in regard to the office of Lieutenant Governor. We should not take the career of Lieutenant Governors in other States as a precedent. There might be a provision made as not to require him to preside over the Senate. He ought to have very different qualifications from that of a presiding officer. If otherwise qualified, he could easily learn the rules of parliamentary usage; the people would not likely choose for a Lieutenant Governor the man who would be selected by the Senate to preside.

Mr. Armstrong thought it unwise to take away from a deliberative body, the power to control the presiding officer of the Senate. He would issue a writ of election, if necessary, in the event of a vacancy by the Governor. The theory of the gentleman from Tyler, may be right, but not in practice. The Lieutenant Governor was selected from party considerations, and in no case on the supposition that he would be called to the office of Governor.

Mr. Price said if the Lieutenant Governor did not preside over the Senate, what should he do; shall he be a mere nominal officer? My friend suggested that he perform the duties of Adjutant General.—You could not get a competent man to accept the office.

Mr. Johnson, of Wood, remarked that our distinguished President, Mr. Price, never was a military man, but Gen. Wheat just suggested that in heavy artillery each carriage carried an extra wheel; it was necessary to have it. The office of Lieutenant Governor was a matter of considerable importance. He hoped the committee would not take the Lieutenant Governor of Ohio as a precedent. On the same ground the incompetency of Governor might be argued against that office.

The question of striking out "Lieutenant Governor" was carried ayes 34, nays 17.

By Mr. Wilson, an amendment striking out "who shall perform the duties of" after Superintendent of Free Schools.

Mr. Johnson (of Wood) individually had no objection.

Mr. Travers would strike out from "Secretary of State" in 2d line to "Auditor" in 3d line, so that Superintendent of Free Schools should not appear in two places.

Mr. Wilson desired to retain in this section the "State Superintendent of Free Schools," that he might be elected by the people, and the

Labor vs. Capital

LETTERS FROM A MECHANIC.

No. 2.

MR. EDITOR:

In my last I endeavored to call the attention of my fellow laborers to the fact that there in reality exists no conflict of interests between capital and labor. I desire now to show where the trouble is, and that the true philosophy lies in the unity of both.

There are those in all communities, who, from selfish motives, having one eye always looking inwards, are endeavoring to convince the working-man that a capitalist is, per se, a tyrant, and are constantly endeavoring to bring about a conflict between the interests of capital and labor. These are the men I would warn against. They are the bane of the working man.

We have said that there are two classes; but on reflection, we find, in fact, another class,—those without money or muscle, men who are said to live by their wits; all the more dangerous to society because there is no law against it.

It is of such as these that Croakers and Anti-Improvement men are composed. With very little seeking, you will find them always in company. They seldom, if ever content with each other, as they nearly always are in accord with each other. The croaker is always afraid something is wrong with the capitalist, and finds very little trouble in convincing his anti improvement friends that they must be on the look-out, for there is another attempt being made to "increase the taxes." On his way home, if he see some city laborers engaged on works of improvement, it makes him so sick that he has to have coffee for dinner. He often possesses influence in the community sufficient to create forebodings of evil in the minds of capitalist and laborer. To the one he says, "Don't invest; it will not pay;" to the other, "the times are very hard—they will be worse before they are better!" thus disheartening both.

The "Anti-Improvement Man" may often be seen behind his counter, with a long, serious face, casting about with his eyes, not so much in expectation of a customer as of a tax-gatherer. He is in the same old store that his grandfather kept. He has painted its front once, at the advice of a friend, and

cause a to

added to

not, the h

property,

that buh

cent. He

working

around th

beg, and i

flow into

things me

soul sees

one dollar

to defray

employan

town. A

that they

as these a

Your

M

At the

evidence i

opol the

room in

Borromeo

couples an

wont to li

Judge J

against t

Comm.,

drowning

in the Q

off Lewis

Mr. Si

Macbias,

was the m

eleven of

her death,

but a few

age. Of

the eleven

A gentle

to do some

highly re-

young as-

her: "as

find a man

replied, "

these two

Gen. I

private b

cepting a

him by th

nection it

banks with

ter Washi

succeeded

Mail.

Most o

adopted

going to

over, risi

evening

going to

impone

condition

Y. Mail.

A youn

had just

hired a f

detook th

The resul

banks of

corn, and

sale of c

WEST VIRGINIA DIVISION OF CULTURE AND HISTORY



West Virginia Archives & History

1872 Constitution**CONSTITUTION****OF THE****STATE OF WEST VIRGINIA.****ARTICLE 1. RELATIONS TO THE GOVERNMENT OF THE UNITED STATES.**

1. The State of West Virginia is, and, shall remain, one of the United States of America. The Constitution of the United States of America, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

2. The government of the United States is a government of enumerated powers, and all powers not delegated to it, nor inhibited to the States, are reserved to the States or to the people thereof. Among the powers so reserved by the States, is the exclusive regulation of their own internal government and police; and it is the high and solemn duty of the several departments of government, created by this Constitution, to guard and protect the people of this State, from all encroachments upon the rights so reserved.

3. The provisions of the Constitution of the United States, and of this State, are operative alike in a period of war as in time of peace, and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good government, and tends to anarchy and despotism.

4. 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, nearly as may be, an equal number of population, to be determined according to the rule prescribed in the Constitution of the United States.

**ARTICLE II.
THE STATE.**

1. The territory of the following counties, formerly parts of the Commonwealth of Virginia, shall constitute and form the State of West Virginia, viz:

The counties of Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood and Wyoming. The State of West Virginia includes the bed, bank and shores of the Ohio river, and so much of the Big Sandy river as

was formerly included in the Commonwealth of Virginia; and all territorial rights and property in, and jurisdiction over, the same, heretofore reserved by, and vested in, the Commonwealth of Virginia, are vested in, and shall hereafter be exercised by, the State of West Virginia. And such parts of the said beds, banks and shores, as lie opposite, and adjoining the several counties of this State, shall form parts of said several counties respectively.

2. 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.

3. All persons residing in this State, born, or naturalized in the United States, and subject to the jurisdiction thereof, shall be citizens of this State.

4. 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.

5. No distinction shall be made between resident aliens and citizens, as to the acquisition, tenure, disposition, or descent of property.

6. 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 or fine, as may be prescribed by law.

7. The present seal of the State, with its motto, "Montani Semper Liberi," shall be the great seal of the State of West Virginia, and shall be kept by the Secretary of State, to be used by him officially, as directed by law.

8. Writs, grants and commissions, issued under the authority of this State, 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."

ARTICLE III. BILL OF RIGHTS.

1 All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: the enjoyment of life and liberty, with the means of acquiring and possessing property, and of pursuing and obtaining happiness and safety.

2. All power is vested in, and consequently derived from, the people. Magistrates are their trustees and servants, and at all times amenable to them.

3. Government is instituted for the common benefit, protection and security of the people, nation or community. Of all its various forms that is the best, which, is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and when any government shall be found inadequate or contrary to these purposes, a majority of the community, has an indubitable, inalienable, and indefeasible right to reform, alter or abolish it in such manner as shall be judged most conducive to the public weal.

4. The privilege of the writ of habeas corpus shall not be suspended. 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.

5. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Penalties shall be proportioned to the character and degree of the offence. No person shall be

transported out of, or forced to leave the State, for any offence committed within the same; nor shall any person, in any criminal case, be compelled to be a witness against himself, or be twice put in jeopardy of life or liberty for the same offence.

6. 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 except upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, or the person or thing to be seized.

7. No law abridging the freedom of speech, or of the press, shall be passed; but the Legislature may, by suitable penalties, restrain the publication or sale of obscene books, papers or pictures, and provide for the punishment 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.

8. 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.

9. Private property shall not be taken or damaged for public use, without just compensation; nor shall the same be taken by any company, incorporated for the purposes of internal improvement, until just compensation shall have been paid, or secured to be paid, to the owner; and when private property shall be taken, or damaged, for public use, or for the use of such corporations, the compensation to the owner shall be ascertained in such manner, as may be prescribed by general law: *Provided*, that when required by either of the parties, such compensation shall be ascertained by an impartial jury of twelve freeholders.

10. No person shall be deprived of life, liberty or property, without due process of law, and the judgment of his peers.

11. Political tests, requiring persons, as a pre-requisite to the enjoyment of their civil and political rights, to purge themselves by their own oaths, of past alleged offences, are repugnant to the principles of free government, and are cruel and oppressive. No religious or political test oath shall be required as a pre-requisite or qualification to vote, serve as a juror, sue, plead, appeal, or pursue any profession or employment. Nor shall any person be deprived by law, of any right, or privilege, because of any act done prior to the passage of such law.

12. Standing armies, in time of peace, should be avoided, as dangerous to liberty. The military shall be subordinate to the civil power; and no citizen, unless engaged in the military service of the State, shall be tried or punished by any military court, for any offence that is cognizable by the civil courts of the State. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

18. In suits at common law, where the value in controversy, exclusive of interest and costs, exceeds twenty dollars, the right of trial by jury of twelve men, if required by either party, shall be preserved; except that in appeals from the judgments of justices, a jury of a less number may be authorized by law; but in trials of civil cases before a justice, no jury shall be allowed. No fact tried by a jury, shall, in any case, be otherwise re-examined, than according to the rules of the common law.

14. Trials of crimes, and of misdemeanors, unless herein otherwise provided, shall be by a jury of twelve men, public, without unreasonable delay, and in the county where the alleged offence was committed, unless upon petition of the accused, and for good cause shewn, it is removed to some other county. In all such trials, the accused shall be fully and plainly informed of the character and cause of the accusation, and be confronted with the witnesses against him, and shall have the assistance of counsel, and a reasonable time to prepare for his defence; and there shall be awarded to him, compulsory process for obtaining witnesses in his favor.

1.5. 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, for every person to select his religious instructor, and to make for his support, such private contract, as he shall please.

16. The right of the people to assemble in a peaceable manner, to consult for the common good, to instruct their representatives, or to apply for redress of grievances, shall be held inviolate.

17. The courts of this State shall be open, and every person, for an injury done to him, in his person, property, or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.

18. No conviction shall work corruption of blood or forfeiture of estate.

19. No hereditary emoluments, honors or privileges, shall ever be granted or conferred in this State.

20. Free government, and the blessings of liberty, can be preserved to any people, only by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles.

ARTICLE IV. ELECTIONS AND OFFICERS.

1. The male citizens of the State, shall be entitled to vote at all elections held within the counties, 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 sixty days next preceding such offer, shall be permitted to vote, while such disability continues; 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.

2. In all elections by the people, the mode of voting shall be by ballot; but the voter shall be left free to vote by either open, sealed or secret ballot as he may elect.

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 compelled, 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 person, except citizens entitled to vote, shall be elected or appointed to any State, county, or municipal office; but the Governor and Judges, must have attained the age of thirty, 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 their election, or appointment, or be citizens at the time this Constitution goes into operation.

5. Every person elected, or appointed to any office, before proceeding to exercise the authority, or discharge the duties thereof, shall make oath, or affirmation, that he will support the Constitution of the United States and the Constitution of this State, and that he will faithfully discharge the duties of his said office, to the best of his skill and judgment; and no other oath, declaration, or test, shall be required as a qualification, unless herein otherwise provided.

6. All officers elected or appointed under this Constitution, may, unless in cases herein otherwise provided for, be removed from office, for official misconduct, incompetence, neglect of duty, or gross immorality, in such manner as may be prescribed by general laws, and unless so removed, they 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 second Tuesday of October, until otherwise provided by law. The terms of such officers, not elected or appointed to fill a vacancy, shall unless herein otherwise provided, begin on the first day of January, and of the members of the Legislature, on the first day of November, next succeeding their election. Elections to fill vacancies shall be for the unexpired term. When vacancies occur prior to any general election, they shall be filled by appointments in such manner as may be prescribed herein, or by general law, which appointments shall expire at such time after the next general election, as the person so elected to fill such vacancy shall be qualified.

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. Any officer of the State, may be impeached for mal-administration, corruption, incompetency, gross immorality, 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, and no person shall be convicted without the concurrence of two-thirds of the members elected thereto. When sitting as a court of impeachment, the President of the Supreme Court of Appeals, or, if from any cause, it be improper for him to act, then any other judge of that court, to be designated by it, shall preside; and the Senators shall be on oath, or affirmation, to do justice according to law and evidence. 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 be liable to indictment, trial, judgment, and punishment, according to law. The Senate may sit during the recess of the Legislature, for the trial of impeachments.

10. 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 in this State.

11. The Legislature 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, counting the vote, ascertaining or declaring the result, or fraud, in any manner, upon the ballot.

12. No citizen shall ever be denied, or refused the right or privilege of voting at an election, because his name is not, or has not been registered, or listed, as a qualified voter.

ARTICLE V. DIVISION OF POWERS.

1. The Legislative, Executive, and Judicial Departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that Justices of the Peace shall be eligible to the Legislature.

ARTICLE VI. 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 twenty-four, and the House of Delegates, of sixty-five members, subject to be increased according to the provisions hereinafter contained.

3. Senators shall be elected for the term of four years, and Delegates, for the term of two years. 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 seats for two years; and the second, for four years, so that after the first election, one-half of the Senators, shall be elected bi-ennially.

4. For the election of Senators, the State shall be divided into twelve Senatorial Districts, which number shall not be diminished, but may be increased as hereinafter provided. Every district shall elect two Senators, but, where the district is composed of more than one county, both shall not be chosen from the same county. The districts shall be compact, formed of contiguous territory, bounded by county lines, and, as nearly as practicable, equal in population, to be ascertained by the census of the United States. After every such census, the Legislature shall alter the Senatorial Districts, so far as maybe necessary to make them conform to the foregoing provision.

5. Until the Senatorial Districts shall be altered by the Legislature as herein prescribed, the counties of Hancock, Brooke and Ohio, shall constitute the first Senatorial District; Marshall, Wetzel and Marion, the second; Ritchie, Doddridge, Harrison, Gilmer and Calhoun, the third; Tyler, Pleasants, Wood and Wirt, the fourth; Jackson, Mason, Putnam and Roane, the fifth; Kanawha, Clay, Nicholas, Braxton and Webster, the sixth; Cabell, Wayne, Lincoln, Boone, Logan, Wyoming, McDowell and Mercer, the seventh; Monroe, Greenbrier, Summers, Pocahontas, Fayette and Raleigh, the eighth; Lewis, Randolph, Upshur, Barbour, Taylor and Tucker, the ninth; Preston and Monongalia, the tenth; Hampshire, Mineral, Hardy, Grant and Pendleton, the eleventh; Berkeley, Morgan and Jefferson, the twelfth.

6. For the election of Delegates, every county containing a population of less than three-fifths of 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.

7. 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 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 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.

8. Until a new apportionment shall be declared, the counties of Pleasants and Wood shall form the first Delegate District, and elect three Delegates; Ritchie and Calhoun, the second, and elect two Delegates; Barbour, Harrison and Taylor, the third, and elect one Delegate; Randolph and Tucker, the fourth, and elect one Delegate; Nicholas, Clay and Webster, the fifth, and elect one Delegate; McDowell and Wyoming, the sixth, and elect one Delegate.

9. Until a new apportionment shall be declared, the apportionment of Delegates to the counties not included in Delegate Districts, and to Barbour, Harrison and Taylor counties, embraced in such Districts, shall be as follows:

To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge, Fayette, Hampshire, Hancock, Jackson, Lewis, Logan, Greenbrier, Monroe, Mercer, Mineral, Morgan, Grant, Hardy, Lincoln, Pendleton, Putnam, Boone, Gilmer, Taylor, Tyler, Upshur, Wayne, Wetzel, Wirt, Pocahontas, Summers and Raleigh counties, one Delegate each.

To Berkeley, Harrison, Jefferson, Marion, Marshall, Mason, Monongalia and Preston counties, two Delegates each.

To Kanawha county, three Delegates.

To Ohio county, four Delegates.

10. 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 shall be altered, and Delegates apportioned, under the succeeding census.

11. Additional territory may be admitted into, and become part of this State, with the consent of the Legislature and a majority of the qualified voters of the State, voting on the question. And in such case, provision shall be made by law, for the representation 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 House of the Legislature is to consist, shall thereafter be increased, by the representation assigned to such additional territory.
12. No person shall be a Senator or Delegate, who has not for one year next preceding his election, been a resident within the District or county from which he is elected; and if a Senator or Delegate remove from the District, or county, for which he was elected, his seat shall be thereby vacated.
13. No person holding a lucrative office under this State, the United States, or any foreign government; no member of Congress; no person who is a salaried officer of any railroad company, or who is sheriff, constable, or clerk of any court of record, shall be eligible to a seat in the Legislature.
14. No person who has been, or hereafter shall be, convicted of bribery, perjury, or other infamous crime, shall be eligible to a seat in the Legislature. No person who may have collected, or been entrusted with public money, whether State, county, township, district, or other municipal organization, shall be eligible to the Legislature, or to any office of honor, trust, or profit in this State, until he shall have duly accounted for and paid over such money according to law.
15. No Senator or Delegate, during the term for which he shall have been elected, shall be elected or appointed to any civil office of profit under this State, which has been created, or the emoluments of which have been increased during such term, except offices to be filled by election by the people. Nor shall any member of the Legislature be interested, directly or indirectly, in any contract, with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected.
16. Members of the Legislature, before they enter upon their duties, shall take and subscribe the following oath, or affirmation : "I do solemnly swear (or affirm,) that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and faithfully discharge the duties of Senator (or Delegate,) according to the best of my ability;" and they shall also take this further oath, to wit: "I will not accept or receive directly or indirectly, any money or other valuable thing, from any corporation, company, or person, for any vote or influence I may give or withhold, as Senator (or Delegate,) on any bill, resolution or appropriation, or for any act I may do or perform as Senator (or Delegate)." These oaths shall be administered in the Hall of the House to which the member is elected, by a Judge of the Supreme Court of Appeals, or of a Circuit Court, or by any other person authorized by law to administer an oath; and the Secretary of State shall record and file said oaths subscribed by each member; and no other oath or declaration shall be required as a qualification. Any member who shall refuse to take the oath herein prescribed, shall forfeit his seat; and any member, who shall be convicted of having violated the oath last above required to be taken, shall forfeit his seat, and be disqualified thereafter from holding any office of profit or trust in this State.
17. 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; and for words spoken in debate, or any report, motion or proposition, made in either House, a member shall not be questioned in any other place.
18. The Legislature shall assemble at the Seat of Government bi-ennially, and not oftener, unless convened by the Governor. The first session of the Legislature, after the adoption of this Constitution, shall commence on the third Tuesday of November, 1872; and the regular bi-ennial session of the Legislature shall commence on the second Wednesday of January, 1875, and every two years thereafter, on the same day.
19. 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 it, on application in writing, of three-fifths of the members elected to each House.
20. The Seat of Government shall be at Charleston, until otherwise provided by law.

21. The Governor may convene the Legislature at another place, when, in his opinion, it cannot safely assemble at the Seat of Government; and the Legislature may, when in session, adjourn to some other place, when in its opinion, the public safety or welfare, or the safety of its members, or their health shall require it.
22. No session of the Legislature, after the first, shall continue longer than forty-five days, without the concurrence of two-thirds of the members elected to each House.
23. Neither House shall, during the session, adjourn for more than three 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 sitting.
24. A majority of the members, elected to each House of the Legislature, shall constitute a quorum. But a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, as each House may provide. Each House shall determine the rules of its proceedings, and be the judge of the elections, returns and qualifications, of its own members. The Senate shall choose, from its own body, a President; and the House of Delegates, from its own body, a Speaker. Each House shall appoint its own officers, and remove them at pleasure. The oldest Delegate present, shall call the House to order, at the opening of each new House of Delegates, and preside over it, until the Speaker thereof shall have been chosen, and have taken his seat. The oldest member of the Senate present at the commencement of each regular session thereof, shall call the Senate to order, and preside over the same until a President of the Senate shall have been chosen, and have taken his seat.
25. Each House may punish its own members for disorderly behavior, and with the concurrence of two-thirds of the members elected thereto, expel a member, but not twice for the same offence.
26. Each House shall have power to provide for its own safety, and the undisturbed transaction of its business, and may punish by imprisonment, any person not a member, for disrespectful behavior in its presence; for obstructing any of its proceedings, or any of its officers in the discharge of his duties, or for any assault, threat 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.
27. Laws shall be enacted and enforced, by suitable provisions and penalties, requiring sheriffs, and all other officers, whether State, county, district or municipal, who shall collect or receive, or whose official duty it is, or shall be, to collect, receive, hold, or pay out any money belonging to, or which is, or shall be, for the use of the State or of any county, district, or municipal corporation, to make annual account and settlement therefor. Such settlement, when made, shall be subject to exceptions, and take such direction, and have only such force and effect, as may be provided by law; but in all cases, such settlement shall be recorded, and be open to the examination of the people at such convenient place or places, as may be appointed by law.
28. Bills and resolutions may originate in either House, but may be passed, amended or rejected by the other.
29. No bill shall become a law, until it has been fully and distinctly read, on three different days in each House, unless, in case of urgency, by a vote of four-fifths of the members present, taken by yeas and nays on each bill, this rule be dispensed with: *Provided*, in all cases, that an engrossed bill shall be fully and distinctly read in each House.
30. No act hereafter passed, shall embrace more than one object, and that shall be expressed in the title. But if any object shall be embraced in an act, which is not so expressed, the act shall be void only as to so much thereof, as shall not be so expressed, and no law shall be revived, or amended, by reference to its title only; but the law revived, or the section amended, shall be inserted at large, in the new act. And no act of the Legislature, except such as may be passed at the first session under this Constitution, shall take effect, until the expiration of ninety days after its passage, unless the Legislature shall, by a vote of two-thirds of the members elected to each House, taken by yeas and nays, otherwise direct.
31. When a bill, or joint resolution, passed by one House, shall be amended by the other, the question on

agreeing to the bill, or joint resolution, as amended, shall be again voted on, by yeas and nays, in the House by which it was originally passed, and the result entered upon its journals; in all such cases, the affirmative vote of a majority of all the members elected to such House shall be necessary.

32. Whenever the words, "a majority of the members elected to either House of the Legislature," or words of like import, are used in this Constitution, they shall be construed to mean a majority of the whole number of members to which each House is, at the time, entitled, under the apportionment of representation, established by the provisions of this Constitution.

33. The members of the Legislature shall each receive for their services, the sum of four dollars per day, and ten cents for each mile traveled in going to, and returning from, the seat of Government, by the most direct route. The Speaker of the House of Delegates, and the President of the Senate, shall each receive an additional compensation of two dollars per day for each day they shall act as presiding officers. No other allowance or emolument than that by this section provided, shall directly or indirectly be made or paid to the members of either House, for postage, stationery, newspapers, or any other purpose whatever.

34. The Legislature shall provide by law, that the fuel, stationery and printing paper, furnished for the use of the State; the copying, printing, binding and distributing the laws and journals; and all other printing ordered by the Legislature, shall be let by contract to the lowest responsible bidder, bidding under a maximum price to be fixed by the Legislature; and no member or officer thereof, or officer of the State, shall be interested, directly or indirectly, in such contract, but all such contracts shall be subject to the approval of the Governor, and in case of his disapproval of any such contract, there shall be a re-letting of the same in such manner as may be prescribed by law.

35. The State of West Virginia shall never be made defendant in any court of law or equity.

36. The Legislature shall have no power to authorize lotteries, or gift enterprises, for any purpose, and shall pass laws to prohibit the sale of lottery, or gift enterprise tickets in this State.

87. No law shall be passed after the election of any public officer, which shall operate to extend the term of his office.

38. No extra compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract made; nor shall any Legislature authorize the payment of any claim or part thereof, hereafter created against the State, under any agreement or contract made, without express authority of law; and all such unauthorized agreements shall be null and void. Nor shall the salary of any public officer be increased, or diminished, during his term of office, nor shall any such officer, or his or their sureties, be released from any debt or liability due to the State: *Provided*, The Legislature may make appropriations for expenditures hereafter incurred, in suppressing insurrection, or repelling invasion.

39. The Legislature shall not pass local or special laws, in any of the following enumerated cases; that is to say, for

Granting divorces;

Laying out, opening, altering and working roads or highways ;

Vacating roads, town plats, streets, alleys and public grounds;

Locating or changing county seats;

Regulating or changing county or district affairs;

Providing for the sale of church property, or property held for charitable uses;

Regulating the practice in courts of justice;

Incorporating cities, towns or villages, or amending the charter of any city, town or village, containing a population of less than two thousand;

Summoning, or impaneling grand or petit juries; The opening, or conducting of any election, or designating the place of voting;

The sale, or mortgage of real estate, belonging to minors, or others under disability;

Chartering, licensing, or establishing ferries, or toll bridges;

Remitting fines, penalties, or forfeitures;

Changing the law of descent;

Regulating the rate of interest;

Authorizing deeds to be made for land sold for taxes; :

Releasing taxes;

Releasing title to forfeited lands.

The Legislature shall provide, by general laws, for the foregoing and all other cases for which provision can be so made; and in no case shall a special act be passed, where a general law would be proper, and can be made applicable to the case, nor in any other case in which the courts have jurisdiction, and are competent to give the relief asked for.

40. The Legislature shall not confer upon any court, or judge, the power of appointment to office, further than the same is herein provided for.

41. Each House shall keep a journal of its proceedings, and cause the same to be published from time to time, and all bills and joint resolutions, shall be described therein, as well by their title as their number, and the yeas and nays on any question, if called for by one-tenth of those present, shall be entered on the journal.

42. Bills making appropriations for the pay of members, and officers of the Legislature, and for salaries for the officers of the Government, shall contain no provision on any other subject.

43. The Legislature shall never authorize, or establish any board, or court of registration of voters.

44. In all elections to office which may hereafter take place in the Legislature, or in any county, or municipal body, the vote shall be *viva voce*, and be entered on its journals.

45. It shall be the duty of the Legislature, at its first session after the adoption of this Constitution, to provide, by law, for the punishment by imprisonment in the penitentiary, of any person who shall [l] bribe, or attempt to bribe, any executive or judicial officer of this State or any member of the Legislature in order to influence him, in the performance of any of his official or public duties; and, also, to provide by law, for the punishment by imprisonment in the penitentiary, of any of said officers, or any member of the Legislature, who shall demand, or receive, from any corporation, company, or person, any money, testimonial, or other valuable thing, for the performance of his official or public duties, or for refusing, or failing to perform the same, or for any vote or influence, a member of the Legislature, may give or with[h] old as such member; and, also, to provide by law, for compelling any person., so bribing or attempting to bribe, or so demanding, or receiving a bribe, fee, reward, or testimonial, to testify against any person or persons, who may have committed any of said offences: *Provided*, that any person compelled to testify, shall be exempted from trial and punishment for the offence of which, he may have been guilty, and concerning which he is compelled to testify; and any person convicted of any of the offences specified in this section, shall, as a part of the punishment thereof, be forever disqualified from holding any office, or position of honor, trust, or profit in this State.

46. Laws may be passed regulating or prohibiting the sale of intoxicating liquors within the limits of this State.

47. 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, and for the sale and transfer thereof, so that it shall be held, used, or transferred for the purposes of such church, or religious denomination.

48. Any husband or parent, residing in this State, or the infant children of deceased parents, may hold a homestead of the value of one thousand dollars, and personal property to the value of two hundred dollars, exempt from forced sale subject to such regulations as shall be prescribed by law: *Provided*, that such homestead exemption shall in nowise affect debts or liabilities existing at the time of the adoption of this Constitution: *and provided further*, that no property shall be exempt from sale for taxes due thereon, or for the payment of purchase money due upon said property, or for debts contracted for the erection of improvements thereon.

49. The Legislature shall pass such laws as may be necessary to protect the property of married women from the debts, liabilities, and control of their husbands.

50. The Legislature may provide for submitting to a vote of the people at the general election to be held in 1876, or at any general election thereafter, a plan or scheme of proportional representation in the Senate of this State ; and if a majority of the votes cast at such election be in favor of the plan submitted to them, the Legislature shall at its session succeeding said election, re-arrange the Senatorial Districts in accordance with the plan so approved by the people.

ARTICLE VII. EXECUTIVE DEPARTMENT.

1. The Executive Department shall consist of a Governor, Secretary of State, State Superintendent of Free Schools, Auditor, Treasurer, and Attorney-General, who shall be, *ex officio*, Reporter of the Court of Appeals. Their terms of office, respectively, shall be four years, and shall commence on the fourth day of March, next after their election. They shall, except the Attorney-General, reside at the Seat of Government during their terms of office, and keep there the public records, books and papers, pertaining to their respective offices, and shall perform such duties as may be prescribed by law.

ELECTION.

2. An election for Governor, State Superintendent of Free Schools, Auditor, Treasurer, and Attorney-General, shall be held at such times and places as may be prescribed in this Constitution, or by general law.

3. The returns of every election for the above named officers, shall be sealed up and transmitted by the returning officers, to the Secretary of State, directed, "to the Speaker of the House of Delegates," who shall, immediately after the organization of the House and before proceeding to business, open and publish the same, in the presence of a majority of each House of the Legislature, which shall, for that purpose, assemble in the Hall of the House of Delegates. The person having the highest number of votes for either of said offices, shall be declared duly elected thereto; but if two or more have an equal and the highest number of votes for the same office, the Legislature shall, by joint vote, choose one of such persons for said office. Contested elections for the office of Governor, shall be determined by both Houses of the Legislature, by joint vote, in such manner as may be prescribed by law. The Secretary of State shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall continue in office, unless sooner removed, until the expiration of the official term of the Governor by whom he shall have been appointed.

ELIGIBILITY.

4. Neither the Governor, State Superintendent of Free Schools, Auditor, Treasurer, nor Attorney General, shall hold any other office, during the term of his service. The Governor shall be ineligible to said office, for the four years, next succeeding the term for which he was elected.

5. The chief executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed.

6. The Governor shall, at the commencement of each session, give to the Legislature information, by message, of the condition of the State, and shall recommend such measures as he shall deem expedient.. He shall accompany his message with a statement of all money received and paid out by him, from any funds, subject to his order, with vouchers therefor; and, at the commencement of each regular session present estimates of the amount of money required by taxation for all purposes.

7. The Governor may, on extraordinary occasions, convene, at his own instance, the Legislature; but when so convened, it shall enter upon no business, except that stated in the proclamation by which it was called together.

8. The Governor shall nominate, and by and with the advice and consent of the Senate, (a majority of all the Senators elected concurring by yeas and nays,) appoint all officers whose offices are established by this Constitution, or shall be created by law, and whose appointment or election is not otherwise provided for; and no such officers shall be appointed or elected by the Legislature.

9. In case of a vacancy, during the recess of the Senate, in any office which is not elective, the Governor shall by appointment, fill such vacancy, until the next meeting of the Senate, when he shall make a nomination for such office, and the person so nominated, when confirmed by the Senate, (a majority of all the Senators elected concurring by yeas and nays,) shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the Senate, shall be again nominated for the same office, during the same session, unless at the request of the Senate; nor shall such person be appointed to the same office during the recess of the Senate.

10. The Governor shall have power to remove any officer whom he may appoint, in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare his office vacant, and fill the same, as herein provided in other cases of vacancy.

11. The Governor 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 where 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 therefor.

12. The Governor shall be commander-in-chief of the military for of the State, (except when they shall be called into the service of the United States,) and may call out the same, to execute the laws, suppress insurrection, and repel invasion.

13. When any State officer has executed his official bond, the Governor shall, for such causes, and in such manner as the Legislature may direct, require of such officer reasonable additional security; and if the security is not given as required, his office shall be declared vacant, in such manner as may be provided by law.

14. Every bill passed by the Legislature, shall before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if not; he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, a majority of the members elected to that House, agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall, likewise, be reconsidered, and if approved by a majority of the members elected to that House, it shall become a law, notwithstanding the objections of the Governor. But in all such cases, the vote of each House shall be determined by yeas and nays, to be entered, on the journal. Any bill, which shall not be returned by the Governor within five days (Sunday excepted) after it shall have been presented to him, shall be a law, in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case, it shall be filed, with his objections, in the office of the Secretary of State, within five days after such adjournment, or become a law.

15. Every bill passed by the Legislature, making appropriations of money, embracing distinct items, shall,

before it becomes a law, be presented to the Governor; if he disapprove the bill, or any item or appropriation therein contained, he shall communicate such disapproval, with his reasons therefor, to the House in which the bill originated; but all items not disapproved shall have the force and effect of law, according to the original provisions of the bill. Any item, or items, so disapproved shall be void, unless re-passed by a majority of each House, according to the rules and limitations prescribed in the preceding section in reference to other bills.

16. In case of the death, conviction on impeachment, failure to qualify, resignation, or other disability of the Governor, the President of the Senate shall act as Governor, until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House of Delegates; and in all other cases, where there is no one to act as Governor, one shall be chosen by joint vote of the Legislature. Whenever a vacancy shall occur in the office of Governor, before the first three years of the term shall have expired, a new election for Governor shall take place to fill the vacancy.

17. If the office of Auditor, Treasurer, State Superintendent of Free Schools, or Attorney-General, shall become vacant by death, resignation, or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified, in such manner as may be provided by law.

The subordinate officers of the Executive Department, and the officers of all public institutions of the State, shall keep an account of all moneys received or disbursed by them respectively, from all sources, and for every service performed, and make a semi-annual report thereof to the Governor, under oath or affirmation; and any officer who shall wilfully make a false report, shall be deemed guilty of perjury.

18. The subordinate officers of the Executive Department, and the officers of all the public institutions of the State, shall, at least ten days preceding each regular session of the Legislature, severally report to the Governor, who shall transmit such report to the Legislature; and the Governor may at any time require information in writing, under oath, from the officers of his department, and all officers and managers of State institutions, upon any subject relating to the condition, management, and expenses, of their respective offices.

19. The Governor shall receive for his services a salary of twenty-seven hundred dollars per annum, and no additional emolument, allowance, or perquisite, shall be paid or made to him, on any account. Any person, acting as Governor, shall receive the emoluments of that office. The Secretary of State shall receive one thousand; the State Superintendent of Free Schools, fifteen hundred; the Treasurer, fourteen hundred; the Auditor, two thousand; and the Attorney-General, thirteen hundred dollars per annum; and no additional emolument or allowance, except as herein otherwise provided, shall be paid or made out of the treasury of the State to any of the foregoing executive officers, on any account.

ARTICLE VIII. JUDICIARY DEPARTMENT.

1. The judicial power shall be vested in a Supreme Court of Appeals, and in Circuit Courts, and the Judges thereof; in County and Corporation Courts, and in Justices of the Peace.

SUPREME COURT OF APPEALS.

2. The Supreme Court of Appeals shall consist of four Judges, any three of whom shall be a quorum. They shall be elected by the voters of the State, and shall hold their office for the term of twelve years, unless sooner removed in the manner prescribed by this Constitution; except, that of those first elected, two, to be designated by lot in such manner as they may determine, and in the presence of the Governor, shall hold their offices for four years; a third, to be designated in like manner, for eight years, and the fourth, for twelve years; so that one or more shall be elected every four years.

3. It shall have original jurisdiction in cases of *habeas corpus*, *mandamus*, and *prohibition*. It shall have appellate jurisdiction in civil cases, where the matter in controversy, exclusive of costs, is of greater value, or amount than one 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 *quo warranto*, *habeas corpus*, *mandamus* and *prohibition*, and in 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, where a conviction has been had in any inferior court, and been affirmed in a Circuit Court.

4. No decision rendered by the Supreme Court of Appeals, shall be considered as binding authority upon any of the inferior courts of this State, except in the particular case decided, unless such decision is concurred in, by at least three judges of said court.

5. When a judgment, or decree is reversed, or affirmed, by the Supreme Court of Appeals, every point fairly arising upon the record of the case, shall be considered, and decided; and the reasons therefor shall be concisely stated in writing, and preserved with the record of the case; and it shall be the duty of the Court to prepare a syllabus of the points adjudicated in each case concurred in by three of the judges thereof, which shall be prefixed to the published report of the case.

6. A writ of error, supersedeas, or appeal shall be allowed only by the Supreme Court of Appeals, or a Judge thereof, or by a Judge of a Circuit Court, upon a petition assigning error in the judgment or proceedings of the inferior court, and then only after the said Court or Judge shall have examined, and considered the record and assignment of errors, and is satisfied, that there is error in the same, or that it presents a point, proper for the consideration of the Court of Appeals.

7. If a vacancy shall occur in said Court, from any cause, the Governor shall issue a writ of election, to fill such vacancy for the residue of the term: *Provided*, That if the unexpired term, be less than two years, the Governor shall appoint a Judge to fill such vacancy.

8. The officers of the Supreme Court of Appeals, except the Reporter, shall be appointed by the Court, or, in vacation, by the Judges thereof, with the power of removal; their duties and compensation shall be prescribed by law.

9. There shall be at least two terms of the Court of Appeals held annually, at such times and places, as may be prescribed by law.

CIRCUIT COURTS.

10. The State shall be divided into nine circuits; for each circuit a Judge shall be elected by the voters thereof, who shall hold his office for the term of eight years, unless sooner removed in the manner prescribed by this Constitution.

During his continuance in office, he shall reside in the circuit of which he is Judge.

11. A Circuit Court shall be held in every county, twice a year. But provision may be made by law for special terms; and a judge of any circuit may hold the court, in another circuit.

12. The Circuit Courts shall have the supervision of all proceedings before the County Courts, and other inferior tribunals, by *mandamus prohibition*, or *certiorari*. They shall, except in cases confided by this Constitution exclusively to some other tribunal, have original, and general jurisdiction of all matters at law, where the amount in controversy, exclusive of interest, exceeds fifty dollars: in cases of *quo-warranto*, *habeas corpus*, *mandamus*, or *prohibition*; and in all cases of equity, and of all felonies, and misdemeanors. They shall have appellate jurisdiction, upon petition and assignment of error, in all cases of judgments, decrees, and final orders, rendered by the County Court, and such other inferior courts of record as may be hereafter established by law under the provisions of this article, where the matter in controversy, exclusive of costs, is of greater value or amount, than twenty dollars ; in controversies respecting 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*, *quo-warranto*, *mandamus*, *prohibition*, and *certiorari*, and in cases involving freedom, or the constitutionality of a law; and in all cases of conviction under criminal prosecutions in said court. It shall have such other original jurisdiction, as may be prescribed by law.

13. The Legislature may authorize by general law, any indictment for a misdemeanor found by the grand jury of any Circuit Court, to be certified by said court to the County Court of the county, in which the indictment shall be found, for further proceedings to be had thereon, in such manner, and under such regulations, as may be proscribed by law.

14. The State shall be arranged into the following circuits: - The counties of Hancock, Brooke, Ohio and Marshall, shall constitute the first circuit; the counties of Wetzel, Marion, Monongalia, Taylor, Doddridge and Harrison, the second; the counties of Jefferson, Berkeley and Morgan, the third; the counties of Hampshire, Mineral, Grant, Hardy and Pendleton, the fourth; the counties of Tyler, Pleasants, Ritchie, Wood, Wirt and Calhoun, the fifth; the counties of Randolph, Tucker, Barbour, Lewis, Webster, Gilmer, Preston and Upshur, the sixth; the counties of Jackson, Roane, Putnam, Kanawha and Mason, the seventh; the counties of Greenbrier, Monroe, Fayette, Summers, Clay, Nicholas, Pocahontas and Bra:xtton, the eighth; and the counties of Cabell, Wayne, Lincoln, Boone, Logan, Wyoming, Mercer, Raleigh and McDowell, the ninth.

15. The Legislature may, after the expiration of five years from the time this Constitution goes into operation, re-arrange the circuits, but the number of circuits shall not then be increased; and no rearrangement of the circuits shall have the effect of removing a Judge from office. After the census of 1880, it may increase the number of circuits, so as not to exceed one circuit, for every fifty-five thousand inhabitants of the State.

16. The Legislature shall provide by law for holding Circuit Courts where, from any cause, the Judge shall fail to attend, or if in attendance, cannot properly preside.

GENERAL PROVISIONS.

17. All Judges shall be commissioned by the Governor. The salary of the Judges of the Court of Appeals shall be twenty-two hundred and fifty dollars per annum, and that of Judges of the Circuit Court shall be two thousand dollars; and each shall receive the same allowance for necessary travel, as members of the Legislature. No Judge, during his term of office, shall practice the profession of law, or 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.

18. Judges may be removed from office by a concurrent vote of both Houses of the Legislature, where from age, disease, or mental or bodily infirmity, they are incapable of discharging the duties of their offices. But two-thirds of the members elected to each House, must concur in such vote; and the cause of removal shall be entered upon the journal of each House. The Judge, against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied with the cause alleged for his removal, at least twenty days before the day on which either House of the Legislature shall act thereupon.

19. The voters of each county shall elect a Clerk of the Circuit Court, whose term of office shall be six 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 shall be filled by election. 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.

20. The Clerks of the Circuit Courts, and the Clerk of the Supreme Court of Appeals, shall, under such regulations as may be prescribed by law, make an annual report to the Auditor, exhibiting the number of suits commenced, pending, and decided in their respective Courts, and the number of days the Courts were in session during the year, which shall be condensed by said Auditor, and made a part of his annual report to the Legislature.

21. Wherever the Legislature is expressly prohibited by this Constitution from doing any particular act, and the same shall be done, in violation of such prohibition, it shall be the duty of the Courts, upon a proper case presented before them, to declare such act null and void.

22. The Legislature may establish courts of limited jurisdiction within any incorporated town or city, subject to such appeal as now is, or may hereafter be, prescribed by law.

COUNTY COURTS.

23. There shall be in each county of the State, a County Court, which shall be composed of a President and two Justices of the Peace, except when, by this Constitution, the presence of a greater number is required. It shall hold six sessions during the year, at times to be prescribed by law; two of which shall be limited to matters connected with the police and fiscal affairs of the county; the other four shall be held for the trial of causes, and for the transaction of all other business within the general jurisdiction of the Court, except an assessment or levy upon the property of the county. In all cases where a levy of the county is laid, a majority of all the Justices elected in the county, shall be necessary to constitute a quorum for the transaction of that business.

24. The President of the Court shall be elected by the voters of the county, and shall hold his office for the term of four years. It shall be his duty to attend each term of the said Court, and he shall receive for such service, four dollars for every day he presides in Court, to be paid from the county treasury. He shall also perform such other duties, and receive such compensation therefor, as may be prescribed by law; except, that he shall not be authorized to try causes out of Court. When from any cause he is unable to attend as President of the Court, any Justice may be added to make the Court, who, in conjunction with the other two, may designate one of their own number to preside in his absence.

25. Each county shall be laid off into districts, not less in number than three, nor more than ten, as nearly equal as may be in territory and population. In each district there shall be elected by the voters thereof, one, and not more than two, Justices of the Peace, who shall reside in their respective districts, and hold their office for the term of four years.

The present sub-divisions of the counties by townships, shall constitute such districts until changed by a court constituted of a majority of the Justices of the county.

26. The Justices of the Peace shall be classified by law, for the performance of their duties in Court; they shall receive a compensation of three dollars per day, for their services in Court, to be paid out of the county treasury, and they may receive fees for other official duties, to be prescribed by law, and paid by the parties, for whom the service shall be rendered.

27. The County Court shall have original jurisdiction, in all actions at law, where the amount in controversy exceeds twenty dollars; and also in all cases of *habeas corpus*, *quo warranto*, *mandamus*, *prohibition*, *certiorari*, and in all suits in equity. It shall have jurisdiction in all matters of probate; the appointment and qualification of personal representatives, guardians, committees, and curators, and the settlement of their accounts, and in all matters relating to apprentices; and of all criminal cases under the grade of felony, except as hereinbefore provided. But the jurisdiction of the County Court shall be subject to such limitations as may be prescribed by law. They shall have the custody, through their clerks, of all wills, deeds, and other papers presented for probate, or record in said county, which shall be disposed of, or preserved, as required by law.

28. It shall also have the superintendence and administration of the internal police and fiscal affairs of the county, including the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, with authority to lay, and disburse the county levies: *Provided*, that no license shall be granted in any city, town, or village without the consent of the authorities of the same first had and obtained. It shall, in all contested cases, judge of the election, qualification and returns of its own members, and of all county and district officers; and it shall exercise such other jurisdiction, and perform such other duties, as may be prescribed by law. Nothing in this article shall impair, or affect the charter of any municipal corporation.

29. The County Court shall have jurisdiction of all appeals from the judgment of the Justices, and their decision upon such appeal shall be final in all cases, except such as involve the title, right of possession, or boundaries of lands, the freedom of a person, the validity of a law, or an ordinance of any corporation, or the right of a corporation to levy tolls, or taxes.

No Judge, or Justice shall sit in an appellate court, in review of a decision made by him.

30. The voters of each county shall elect a Clerk of the County Court, whose term of office shall be six years, and whose duties, compensation and mode of removal shall be prescribed by law.

31. Provision may be made under such regulations as may be prescribed by law, for the probate of wills, and for the appointment and qualification of personal representatives, guardians, committees and curators, during the recess of the regular sessions of the County Court.

32. A vacancy in the office of the President of the Court shall be filled until the next regular election, by the Justices, all of whom shall be summoned for that purpose. Vacancies in the office of Justice of the Peace may be filled, until the next regular election, by the County Court.

33. The civil jurisdiction of a Justice of the Peace, shall extend to actions of assumpsit, debt, detinue, and trover, if the amount claimed, exclusive of interest, does not exceed one hundred dollars, but where the amount claimed, shall exceed twenty dollars, on the application of the defendant, either in person or by counsel, made at any time before trial, it shall be the duty of the Justice of the Peace to transmit the papers in the case to the Clerk of the County Court, to be therein tried. The jurisdiction of Justices of the Peace shall extend throughout their county; they shall be conservators of the peace, and have such jurisdiction and powers in criminal cases as may be prescribed by law. And Justices of the Peace shall have authority to take the acknowledgment of deeds, and other writings, administer oaths, and take and certify depositions. And the Legislature may give to Justices, such additional civil jurisdiction and powers within their respective counties, as may be deemed expedient, under such regulations and restrictions, as may be prescribed by general law; except that in suits to recover money, or damages, their jurisdiction and powers shall in no case, exceed one hundred dollars.

34. The Legislature shall upon the application of any county, reform, modify, or alter the County Court established by this Constitution, in such county, and in lieu thereof, with the assent of a majority of the voters of said county, voting at any election held for that purpose, create another Court, or other tribunals, as well for judicial as for police and fiscal purposes, either separate, or combined, which shall conform to the wishes of the county making the application, but with the same powers and jurisdiction herein conferred upon the County Court, and with compensation to be made from the county treasury.

If two or more adjoining counties shall prefer to unite in the election of a Judge to hold a County Court, in their respective counties, they shall, with the assent of a majority of the voters of each of said counties be authorized, for all the purposes of judicial organization, to do so in the manner, and upon the terms above set forth: *Provided*, that the courts so created shall, in their provisions, be made to conform to the policy of the State, as prescribed in this Constitution.

35. No citizen of this State who aided, or participated in the late war between the Government of the United States and a part of the people thereof, on either side, shall be liable in any proceeding civil or criminal; nor shall his property be seized or sold under final process, issued upon judgments, or decrees heretofore rendered, or otherwise, because of any act done according to the usages of civilized warfare, in the prosecution of said war, by either of the parties thereto.

The Legislature shall provide, by general law, for giving full force and effect to this section, by due process of law.

36. Such parts of the common law, and of the laws of this State, as are in force when this Constitution goes into operation, and are not repugnant thereto, shall be, and continue the law of the State until altered or repealed by the Legislature. All civil and criminal suits and proceedings pending in the former Circuit Courts of this State, shall remain, and be proceeded in before the Circuit Court of the proper County.

ARTICLE IX. COUNTY ORGANIZATION.

1. The voters of each county shall elect a Surveyor of Lands, a Prosecuting Attorney, a Sheriff, and one, and not more than two Assessors, who shall hold their respective offices for a term of four years.

2. There shall also be elected in each district of the county, by the voters thereof, one constable, and if the population of any district shall exceed twelve hundred, an additional Constable, whose term of office shall be four years, and whose powers as such shall extend throughout their county. The Assessor shall, with the advice and consent of the County Court, have the power to appoint one or more assistants. Coroners, overseers of the poor, and surveyors of lands, shall be appointed by the County Court. The foregoing

officers, except the Prosecuting Attorneys, shall reside in the county and district for which they shall be respectively elected.

3. The same person shall not be elected Sheriff for two consecutive full terms; nor shall any person who acted as his deputy be elected successor to such Sheriff, nor shall any Sheriff act as deputy of his successor; nor shall he, during his term of service, or within one year thereafter, be eligible to any other office. 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 remain in force. The duties of the office of Sheriff shall be performed by him, in person, or under his superintendence.

4. The Presidents of the County Courts, the Justices of the Peace, Sheriffs, Prosecuting Attorneys, Clerks of the Circuit, and of the County Courts, and all other county officers, shall be subject to indictment for malfeasance, misfeasance, or neglect of official duty, and upon conviction thereof, their offices shall become vacant.

5. The Legislature shall provide for commissioning such of the officers herein mentioned, as it may deem proper, not provided for in this Constitution, and may require any class of them to give bond with security, for the faithful discharge of the duties of their respective offices.

6. It shall further provide for the compensation, the duties and responsibilities of such officers, and may provide for the appointment of their deputies and assistants by general law.

7. The President of the County Court, and every Justice and Constable shall be a conservator of the peace throughout his county.

8. No new county shall hereafter be formed in this State, with an area of less than four hundred square miles; nor with a population of less than six thousand; nor shall any county, from which a new county, or part thereof shall be taken, be reduced in area below four hundred square miles, nor in population, below six thousand. Nor shall any new county be formed without; the consent of a majority of the voters residing within the boundaries of the proposed new county, and voting on the question.

ARTICLE X 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; all cemeteries and public property, may, by law, be exempted from taxation. The Legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations.

2. The Legislature shall levy an annual capitation tax of one dollar upon each male inhabitant of the State, who has attained the age of twenty-one years, which shall be annually appropriated to the support of free schools. Persons afflicted with bodily infirmity may be exempted from this tax.

3. No money shall be drawn from the treasury but in pursuance of an appropriation made by law, and on a warrant issued thereon by the Auditor; nor shall any money, or fund, be taken for any other purpose than that for which it has been, or may be, appropriated, or provided. A complete and detailed statement of the receipts and expenditures of the public moneys, shall be published annually.

4. 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; but the payment of any liability, other than that for the ordinary expenses of the State, shall be equally distributed over a period of at least twenty years.

5. The power of taxation of the Legislature shall extend to provisions for the payment of the State debt, and interest thereon, the support of Free Schools, and the payment of the annual estimated expenses of the State; but whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year, sufficient, with the

other sources of income, to meet such deficiency, as well as the estimated expenses of such year.

6. The credit of the State shall not be granted to, or in aid of any county, city, 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; 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.

7. County authorities shall never assess-taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars valuation, except for the support of Free Schools; payment of indebtedness existing at the time of the adoption of this Constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three-fifths of all the votes cast for and against it.

8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years : Provided, That no debt shall be contracted under this section, unless all questions connected with the same shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same.

9. The Legislature may, by law, authorize the corporate authorities of cities, towns, and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform, with respect to persons and property within the jurisdiction of the authority imposing the same.

ARTICLE XI. CORPORATIONS.

1. The Legislature shall provide for the organization of all corporations hereafter to be created, by general laws, uniform as to the class to which they relate; but no corporation shall be created by special law: *Provided*, that nothing in this section contained, shall prevent the Legislature from providing by special laws for the connection, by canal, of the waters of the Chesapeake with the Ohio river, by line of the James river, Greenbrier, New river and Great Kanawha.

2. The stockholders of all corporations, and joint stock companies, except banks and banking institutions, created by laws of this State, shall be liable for the indebtedness of such corporations to the amount of their stock subscribed and unpaid, and no more.

3. All existing charters, or grants of special or exclusive privileges, under which organization shall not have taken place, or which shall not have been in operation within two years from the time this Constitution takes effect, shall thereafter have no validity or effect whatever: *Provided*, That nothing herein shall prevent the execution of any *bona fide* contract heretofore lawfully made in relation to any existing charter or grant in this State.

4. The Legislature shall provide by law, that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person, or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock, shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

5. No law shall be passed by the Legislature, granting the right to construct and operate a street railroad within any city, town, or incorporated village, without requiring the consent of the local authorities having the control of the street or highway, proposed to be occupied by such street railroad.

BANKS.

6. The Legislature may provide, by a general banking law, for the creation and organization of banks of issue or circulation, but the stock-holders of any bank hereafter authorized by laws of this State, whether of issue, deposit, or discount, shall be personally liable to the creditors thereof, over and above the amount of stock held by them respectively, to an amount equal to their respective shares so held, for all its liabilities accruing while they are such stock-holders.

RAILROADS.

7. Every railroad corporation, organized or doing business in this State, shall annually, by their proper officers, make a report under oath, to the Auditor of Public Accounts of this State, or some officer to be designated by law, getting forth the condition of their affairs, the operations of the year, and such other matters relating to their respective railroads as may be prescribed by law. The legislature shall pass laws, enforcing by suitable penalties, the provisions of this section.

8. The rolling stock, and all other moveable property, belonging to any railroad company or corporation in this State, shall be considered personal property, and shall be liable to execution and sale, in the same manner as the personal property of individuals; and the Legislature shall pass no law, exempting any such property from execution and sale.

9. Railroads heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as shall be prescribed by law; and the Legislature shall, from time to time, pass laws, applicable to all railroad corporations in the State, establishing reasonable maximum rates of charges for the transportation of passengers and freights, and providing for the correction of abuses, the prevention of unjust discriminations between through and local or way freight and passenger tariffs, and for the protection of the just rights of the public, and shall enforce such laws, by adequate penalties.

10. The Legislature shall, in the law regulating railway companies, require railroads running through, or within a half mile of a town, or village, containing three hundred or more inhabitants, to establish stations for the accommodation of trade and travel of said town, or village.

11. No railroad corporation shall consolidate its stock, property, or franchise, with any other railroad, owning a parallel or competing line, or obtain the possession, or control of such parallel or competing line by lease or other contract, without the permission of the Legislature.

12. The exercise of the power and the right of eminent domain, shall never be so construed, or abridged, as to prevent the taking, by the Legislature, of the property and franchises of incorporated companies, already organized, and subjecting them to the public use, the same as of individuals.

ARTICLE XII. EDUCATION.

1. The Legislature shall provide, by general law, for a thorough and efficient system of free schools.

2. The State Superintendent of Free Schools shall have a general supervision of free schools, and perform such other duties in relation thereto as may be prescribed by law. If in the performance of any such duty imposed upon him by the Legislature, he shall incur any expenses, he shall be reimbursed therefor: *Provided*, the amount does not exceed five hundred dollars in anyone year.

3. The Legislature may provide for County Superintendents, and such other officers as may be necessary to carry out the objects of this Article, and define their duties, powers and compensation.

4. The existing permanent and invested school fund, and all money accruing to this State from forfeited, delinquent, waste and unappropriated lands; and from 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 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; 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 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, or if such interest bearing securities cannot be obtained, then said "School Fund" shall be invested in such other solvent interest bearing securities as shall be approved by the Governor, Superintendent of Free Schools, Auditor and Treasurer, who are hereby constituted the "Board of the School Fund," to manage the same, under such regulations as may be prescribed by law; 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:" *Provided*, That all taxes which, shall be received by the State upon delinquent lands, except the taxes due to the State thereon, shall be refunded to the county, or district by or for which the same were levied.

5. The Legislature shall provide for the support of Free Schools, by appropriating thereto the interest of the invested "School Fund," the net proceeds of all forfeitures and fines accruing to this State under the laws thereof; the State capitation tax; and by general taxation on persons and property or otherwise. It shall also provide for raising, in each county or district, 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.

6. The school districts into which any county is now divided, shall continue until changed in pursuance of law.

7. All levies that may be laid by any county or district for the purpose of Free Schools, shall be reported to the Clerk of the County Court, and shall, under such regulations as may be prescribed by law, be collected by the Sheriff, or other collector, who shall make annual settlement with the County Court; which settlements shall be made a matter of record by the Clerk thereof, in a book to be kept for that purpose.

8. White and colored persons shall not be taught in the same school.

9. No person connected with the free school system of the State, or with any educational institution of any name, or grade under State control, shall be interested in the sale, proceeds or profits of any book or other thing used, or to be used therein, under such penalties as may be prescribed by law: *Provided*, that nothing herein shall be construed to apply to any work written, or thing invented, by such person.

10. No independent free school district, or organization shall hereafter be created, except with the consent of the school district or districts out of which the same is to be created, expressed by a majority of the voters voting on the question.

11. No appropriation shall hereafter be made to any State Normal School, or branch thereof, except to those already established, and in operation, or now chartered.

12. The Legislature shall foster and encourage moral, intellectual, scientific and agricultural improvement; it 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 XIII. LAND TITLES.

1. All private rights and interests in lands in this State derived from or under the laws of the State of Virginia, and from or under the Constitution and laws of this State prior to the time this Constitution goes into operation, shall remain valid and secure, and shall be determined by the laws in force in Virginia, prior to the formation of this State, and by the Constitution and laws in force in this State, prior to the time this Constitution goes into effect.

2. No entry by warrant on land in this State shall hereafter be made.

3. All title to lands in this State, heretofore forfeited, or treated as forfeited, waste and unappropriated, or escheated to the State of Virginia, or this State, or purchased by either of said States at sales made for the non-payment of taxes and become irredeemable, or hereafter forfeited or treated as forfeited or escheated to this State, or purchased by it and become irredeemable, not redeemed, released or otherwise disposed of, vested and remaining in this State, shall be, and is hereby transferred to and vested in any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees,) for so much thereof as such person has, or shall have had actual continuous possession of, under color or claim of title for ten years, and who, or those under whom he claims, shall have paid the State taxes thereon, for any five years during such possession; or if there be no such person, then to any person (other than those for whose default the same may have been forfeited, or returned delinquent, their heirs or devisees,) for so much of said land as such person shall have title or claim to, regularly derived, mediately or immediately from, or under a grant from the Commonwealth of Virginia, or this State, not forfeited, which but for the title forfeited would be valid, and who, or those under whom he claims, has, or shall have paid all State taxes charged or chargeable thereon for five successive years, after the year 1865, or from the date of the grant, if it shall have issued since that year; or if there be no such person as aforesaid, then to any person, (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees,) for so much of said land as such person shall have had claim to and actual continuous possession of, under color of title for any five successive years after the year 1865, and have paid all State taxes charged or chargeable thereon for said period.

4. All lands in this State, waste and unappropriated, or heretofore or hereafter for any cause forfeited, or treated as forfeited, or escheated to the State of Virginia, or this State, or purchased by either and become irredeemable, not redeemed, released, transferred or otherwise disposed of, the title whereunto shall remain in this State till such sale as is hereinafter mentioned be made, shall by proceedings in the Circuit Court of the county in which the lands, or a part thereof, are situated, be sold to the highest bidder.

5. The former owner of any such land, shall be entitled to receive the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which, if the land had not been forfeited, would have been charged or chargeable thereon, since the formation of this State, with interest at the rate of twelve per centum per annum, and the costs of the proceedings, if his claim be filed in the Circuit Court that decrees the sale, within two years thereafter.

6. It shall be the duty of every owner of land to have it entered on the land books of the county in which it, or a part of it is situated, and to cause himself to be charged with the taxes thereon, and pay the same. When for any five successive years after the year 1869, the owner of any tract of land containing one thousand acres or more, shall not have been charged on such books with State tax on said land, then by operation hereof, the land shall be forfeited and the title thereto vest in the State. But if, for any one or more of such five years, the owner shall have been charged with State tax on any part of the land, such part thereof shall not be forfeited for such cause. And any owner of land so forfeited, or of any interest therein at the time of the forfeiture thereof, who shall then be an infant, married woman, or insane person, may, until the expiration of three years after the removal of such disability, have the land, or such interest charged on such books, with all State and other taxes that shall be, and but for the forfeiture would be, chargeable on the land, or interest therein for the year 1863, and every year thereafter with interest at the rate of ten per centum per annum; and pay all taxes and interest thereon for all such years, and thereby redeem the land, or interest therein: *Provided*, such right to redeem, shall in no case extend beyond twenty years from the time such land was forfeited.

ARTICLE XIV. AMENDMENTS.

1. No Convention shall be called, having the 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 House of the Legislature and providing that polls shall be opened throughout the State, on the same day therein specified, which shall not be 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 the members be elected to such Convention, until, at least, one month after the result of the vote shall be duly ascertained, declared and published. And all acts and ordinances of the 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.

2. Any amendment to the Constitution of the State may be proposed in either House of the Legis[la]ture; and if the same, being read on three several days in each House, be agreed toon its third reading, by two-thirds of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the journals, and 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 at the next general election thereafter, and cause the same to be published, at least three months before such election in some newspaper in every county in which a newspaper is printed. And if a majority of the qualified voters, voting on 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 same time, the vote on the ratification or rejection shall be taken on each separately.

Done in Convention at Charleston, this 9th day of April, A. D. 1872.

SAM'L PRICE, *President of the Convention*. Teste: G. J. BUTCHER, *Secretary*.

Government and Politics

West Virginia Archives and History
West Virginia Division of Culture and History
Copyright 2010. All Rights Reserved.
Privacy Notice

12/27/2010

An End To The Senate Leadership Squabble?

MetroNews

Charleston, Kanawha County

It appears the battle over who will control the state Senate once the 2011 Legislative Session begins next month has been decided.

Marshall County Senator Jeff Kessler announced Monday he now has enough votes to change the rules of the Senate to create the position of Acting Senate President and be elected to that post.

"Over the holidays, there have been ongoing discussions between the [Acting] Governor's Chief of Staff, myself and other members of the Senate," Senator Kessler said Monday at the State Capitol.

"I'm happy to report that several other members of the minority in the Democrat caucus have decided to come over and join their friends on the majority side as we come out of the caucus, as we lock arms and come to speak with a unified voice going forward."

When the caucus met earlier this month, the vote was 16-12 to create the Acting Senate President position. That was not enough to make the change with Republicans poised to vote against it.

But Kessler says several senators have thought over the ramifications of not having the proper separation of powers between Senate President Earl Ray Tomblin and his new position as Acting Governor. With no election in the near future to elect a permanent governor, Kessler says the issue had to be addressed.

"It wasn't about personalities. It wasn't about people, It wasn't about power. It's truthfully about the principle of the [Acting] Governor is downstairs and these are very unique times."

Kessler says he now has 19 votes in the Democratic Caucus with more on the way. But he would like to see those earlier opposed to the change of power, including Senate Majority Leader Truman Chafin, come over to his side.

"It takes 18 votes perhaps to get elected. It takes a lot more than that to govern effectively. I would like to come out of this Senate like we have over the years with a 34-0 vote and that would be my hope."

Kanawha County Senator Brooks McCabe was standing by Kessler's side as he made the announcement in the Senate Reception room Monday. McCabe says the votes are there.

"Now is the time we need to start coming back together," Senator McCabe says.

Kessler says there are key issues facing the Senate in the upcoming session that begins January 12th. The budget, energy and the OPEB debt are just a few, according to Kessler, that need the body's full attention. He hopes to have that.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
Upon Original Jurisdiction

STATE OF WEST VIRGINIA
ex rel WEST VIRGINIA CITIZEN
ACTION GROUP,

Petitioner,

v.

No. 101494

EARL RAY TOMBLIN,
President of the West Virginia Senate,
RICHARD THOMPSON,
Speaker of the West Virginia House of
Delegates, and
NATALIE E. TENNANT,
Secretary of State of West Virginia

Respondents.

AND

STATE OF WEST VIRGINIA
ex rel. Thornton Cooper,

Petitioner,

v.

No. 10-4004

EARL RAY TOMBLIN,
Acting Governor of the State of West Virginia,
and President of the West Virginia Senate,
RICHARD THOMPSON,
Speaker of the West Virginia House of
Delegates, and
NATALIE E. TENNANT,
Secretary of State of West Virginia

Respondents.

CERTIFICATE OF SERVICE

On December 27, 2010, comes the undersigned counsel and does hereby certify that service of the attached **RESPONDENT RICHARD THOMPSON'S APPENDIX** has been made upon the opposing parties by mailing a true and exact copy thereof by U.S. Mail to the addresses below:

Kathryn Reed Bayless, Esq.
Bayless Law Firm, PLLC
1607 West Main Street
Princeton, WV 24740
Counsel for Petitioner WV-CAG


Thornton Cooper
3015 Ridgeview Drive
South Charleston, WV 25303
Petitioner pro se

Thomas V. Flaherty, Esq.
Flaherty, Sensabaugh Bonasso, PLLC
PO Box 3843
Charleston, WV 25301
Counsel for Respondent Earl Ray Tomblin

James M. Haviland, Esq.
West Virginia Education Association
1558 Quarrier Street
Charleston, WV 25311
Counsel for WVEA
Thomas P. Maroney, Esq.
Maroney, Williams, Weaver & Pancake, PLLC
608 Virginia Street, East
Charleston, WV 25301
*Counsel for Kenneth Perdue, as President of
the West Virginia AFL-CIO*
Lisa A. Hopkins, Esq.
General Counsel
West Virginia State Auditor's Office
Capitol Complex, Building 1, Room W-100
Charleston, WV 25305
*Counsel for Glen B. Gainer, III, West Virginia
State Auditor*

Silas Taylor, Esq.
West Virginia Attorney General
Room E-26, Building 1
State Capitol Building
1900 Kanawha Boulevard, East
Charleston, WV 25305
Counsel for Respondent Natalie E. Tennant

H. John Rogers, L.C.
Counsel for the Christian Patriotic Front
317 Foundry Street
New Martinsville, WV 26155
Counsel for the Christian Patriotic Front
Charles McElwee, Esq.
606 Briarwood Road
Charleston, WV 25314
Pro se



Anthony J. Majestro, Esquire (WVSB # 5165)
Powell & Majestro, PLLC
405 Capitol Street, Suite P-1200
Charleston, WV 25301
(304) 346-2889
(304) 346-2895 facsimile
Counsel for Respondent Speaker Richard Thompson