

THE VIRGINIA

CONSTITUTIONAL CONVENTION.

(CONTINUED FROM PAGE 7.)

My efforts toward establishing the position that the Constitution of the Convention possesses sovereign powers, limited only by the Constitution of the United States, and that there is no power in Virginia to amend the Constitution in the Legislature, in the Judiciary or in the Executive—that is not subject to the sovereign powers of this Constitution. I quoted the various authorities to sustain this position, and I wish to say that in the original Conventions held in the various States we find precedents for ordaining a Constitution without submission to the people, which could not have been readily done, unless the Conventions were sovereign.

It is said, however, that these Conventions are revolutionary, but I fail to perceive the difference between the Convention of 1776, held in this State, and the Convention that is now being held. The Convention of 1776 possessed sovereign powers and it was in the exercise of sovereignty that it framed and proclaimed its Constitution without submitting it to the people. The only difference is that the Convention of 1776 was held prior to the adoption of the Federal Constitution, and was not limited thereby; while this Convention is limited by the Constitution of the United States. Sovereignty controlled and directed the efforts of the Convention of 1776, and in my humble judgment controls this Convention. It has the power to proclaim its Constitution without submission to the people is undoubtedly sovereign. No greater power can it exert, and only sovereignty can do it. The Federal Constitution was proclaimed without submission to the people for approval. And who will say that that instrument is not valid? And this Convention is amended without submission to the people.

I wish to read what Mr. Tucker, in his work on the Constitution, has to say. I read from Volume 1, page 68: "The fact that all the Constitutions of the original States were ordained by Convention, without a submission of the Constitution to the people, is a powerful argument in favor of the validity of the Constitution. The deliberative act of the representatives elected by the people was thought to have the sanction of the latter without a separate vote. And this was unquestionably the general view of all the States when, in the Federal Convention which composed the Constitution in 1787, their assent was given to the proposed Constitution. Each State through its separate Convention, without any subsequent sanction by the popular vote of its people. The amendments to the Constitution of the United States are adopted by the Legislatures or Conventions of the several States, without the necessity of submission to a popular vote. During the last half century or more it has been the usual practice for the Convention to frame the Constitution and then submit it to a popular vote for final ratification; but this practice had exceptions, and it is not to be held that the validity of a Constitution will not be held to depend upon its final ratification by popular vote."

United States, which is the supreme law for all. So much for those two propositions. Now, it is said that we must take an oath of office, and wherefore? No power has been granted in Virginia, though we have looked diligently for one. It is said, though, by my distinguished friend from Norfolk (Mr. Thompson) that the Underwood Convention believed, and the Underwood Convention undoubtedly did believe, that we were officers, and sought to apply to us the terms of the oath that we were sworn to. My view is that the Congress of the United States cannot limit us; and that the General Assembly cannot limit us. My view equally is that the proposed Constitutional Convention cannot limit us. If the Underwood Convention had a right to put upon us this particular oath, could it not have enlarged the terms of the oath that we designed we should take and bind us absolutely by it? Should it not have said, for instance, that when we came together we should swear that we intended to support the Government of the United States? Is there any provision that could not have been inserted in the oath? And if this question be answered in the affirmative, the consequences of the doctrine that one Convention is not controlled by the action of another preceding Convention? My distinguished friend says it is his contention that he is entitled after organization, but that we must organize under the existing Constitution and bind ourselves by the oath it contains. I cannot take the position, if we are to act freely after organization we are here to act freely in organizing.

So I have come to the belief that we are not trammeled by the terms of whatever of the existing Constitution; that when we were elected we became forthwith an inchoate Convention and that when we assembled here we became a Convention, and we intended for purposes representing the sovereignty and carrying out the purposes of all the people of this Commonwealth. Mr. Daniel: Mr. President, I do not wish to interrupt the gentleman, but I would like to ask him a question in illustration of his own views. Mr. R. Walton Moore: Certainly, sir. Mr. Daniel: If the Underwood Convention were in session after they had themselves adopted this provision regarding a future Convention to take an oath, could they not themselves have amended the oath, and provided that when a Convention comes again does it not take the place, just as if the Convention had been in continuous session, for a representative of the people, who is a continuous body? Mr. R. Walton Moore: Undoubtedly so; and the suggestion of the gentleman from Campbell emphasizes in a better way than was possible for me the point I am urging.

It has been further stated by my friend from Norfolk that we are officers because the Underwood Convention so considered us. I do not think that an oath is a condition precedent to our action. Assuming for the sake of the argument that we are officers and should take the oath, is that step a condition precedent to the validity of our action? Mr. President, I cannot find that the taking of an oath is ever regarded as a condition precedent to valid official action, and I do not think that the oath expressly so decides. Now, my friend, in support of the proposition that the taking of the oath of office is a condition precedent to our action, he has quoted a number of Virginia cases. There are cases that involve minor officials, of whom the Constitution says that they shall hold their offices during their terms, and as to whom the statute distinguishes by that failure to qualify—i. e., take the oath, creates a vacancy. The court relied upon these cases would turn from the sad days of reconstruction to a more pleasing picture. I would turn to a more recent war, when Southern chivalry and Northern valor tried to outstrip North Carolina and South Carolina, fighting upon the same battlefields, fighting shoulder to shoulder, facing a common enemy, marching to the beautiful music of the band under the same flag, and in this country, I find hundreds of years back the courts of England deciding that if an official failed to take the right oath he was not a common law officer, and that his duties of his place, and that his acts were valid and must be upheld. I find the same conclusion accepted with great unanimity by the courts of this country.

So, Mr. President, not to occupy the time of the Convention, I simply wish in reference to my position on the first charge, to say that it seems to me now, even though you grant that the Underwood Convention had the right to prescribe an oath and to require us to take that oath, nevertheless, the Underwood Convention cannot and will be valid and regular and must be sustained by the political authority and by the judicial authority of the State and of the country. That is the position upon which I stand. I said upon the first day of this session in the early stages of this debate and without the opportunity for investigation that I thought the Underwood Convention might invalidate our action and involve ourselves in litigation; that our conduct might be called in question in the State and in the country, and that I should like to find any authority for the proposition that the action of one official or a body of officials is invalid because he or they failed to take the oath, or refused to take the oath, or that the failure of an express provision that the taking of the oath shall be an essential condition precedent. Now, does anybody believe that the Underwood Convention, if that is the General Assembly of this Commonwealth should convene here and should omit to take the oath and should require that in any event, thirty days, its action would be invalid? There is no authority for that. Does any one think that if the Governor of this Commonwealth should come into this Chamber and deliver an inaugural address at the appointed time and omit to take the oath of office, his transactions would be invalid? Has it ever happened that any individual acting in a political capacity are ousted of their power or weakened in the performance of their duties because they have failed to take an oath of office? That was my friend's fundamental proposition. That was the proposition which I had doubt about. That was the only proposition in regard to which I had serious doubts. Now, Mr. President, not being able to discover that there is any risk at all in the regularity or validity of our action, nor having any further further than the action we take here will be considered binding everywhere, and will be upheld everywhere. Resting upon that, I have no doubt that I can take this oath and conscientiously proceed to discharge my duties in the most earnest and amiable manner, yet finding that other gentlemen entertain doubts as to how far they would be permitted to go in case they should thus bind themselves. I have come to the conclusion, however, that for the purpose of so announcing, that we are against the resolution of my friend from Norfolk. (Applause.) Mr. W. W. W. Mr. President, of course I do not know what you mean by I simply want to call on my friend in favor of taking the oath, to come forward and confess their sins (Laughter) and confess their sins (Laughter) and confess their sins (Laughter) some men against their will they will be of the same opinion still; but we have no such men in this body. So if we are to take an oath, let us take it in favor of taking the oath, and let us be converted, I hope they will not hesitate to say so. While the lamp holds out to burn the wickedest will not.

(Laughter, and cries of "Vote.") The President: The question is on the motion submitted by the gentleman from Winchester and Frederick, (Mr. Harrison) to postpone indefinitely the resolution of the gentleman from Norfolk (Mr. Thompson).

The President: The record will show the gentleman from Norfolk will be in order. I desire to state that the gentleman from Nottoway, (Mr. Watson), is absent and on leave. Before he left the city he said to me that he desired to vote in favor of the resolution to postpone it, and as I intended to vote against it, I agreed to pair with him on that proposition. The President: The record will show the gentleman from Nottoway will be in order. I desire to state that the gentleman from Nottoway, (Mr. Watson), is absent and on leave. Before he left the city he said to me that he desired to vote in favor of the resolution to postpone it, and as I intended to vote against it, I agreed to pair with him on that proposition.

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CLEAR WATER IS NOW ASSURED FOR RICHMOND. Finance Committee Views Settling Basin Site and Determines to Buy—Twelve Months to Build. The Finance Committee held its regular meeting yesterday afternoon at 3 o'clock. The books of the Commissioner of Revenue were received and approved, and after adjournment the committee repaired to the site of the proposed settling basin, three miles above the city, and definitely determined upon the purchase of a large part of the property proposed. This action on the part of the committee definitely decides that the city will have clear water in the not far distant future. In the meeting the books of Commissioner Hawkins were carefully examined, and it was seen that they were in most excellent shape. It was stated in the report that at the last meeting of the committee the books of Mr. Hawkins were rejected. Such was not the case. The committee simply did not have time to consider them properly, and held the books open until this meeting. The books show that an increase of about \$2,400,000 in taxable property has been made in the last year. This was considered to be a very handsome increase.

Hardware Concern Chartered—Divorce Proceedings—Street-Car Suit. In the Law and Equity Court yesterday Judge Minor granted a charter to the Virginia-Carolina Hardware Company for the purpose of manufacturing, buying and selling implements of iron, steel and brass. The capital stock to be \$25,000 to \$100,000. The following officers were named: President, John B. Pinder; Vice-President, Walter S. Pinder; Secretary and Treasurer, Henry B. Elliot; Assistant Secretary and Treasurer, John S. Ellett, Jr.; Second Vice-President, L. P. Cary; Directors, the above, and John S. Ellett. A suit for divorce was instituted in the Law and Equity Court by Daisy M. Page vs. William S. Page. Judge Minor granted an order, giving the plaintiff the custody of the children, pending the suit, and restraining the defendant from collecting his salary except under order from court.

THE CITY COURTS. A suit for divorce was instituted in the Law and Equity Court by Daisy M. Page vs. William S. Page. Judge Minor granted an order, giving the plaintiff the custody of the children, pending the suit, and restraining the defendant from collecting his salary except under order from court. Judge Wellford has entirely recovered from his recent spell of sickness. He left yesterday for Gloucester to attend the funeral of his brother-in-law, Dr. Phil. Tallafra. The Hastings Court has adjourned for the term, and the jury has been discharged. The July term of the court will convene on Monday.

FOURNIER AGAIN FIRST. He Adds to Duke of Luxembourg's Prize That Offered by Hanover. HANOVER, PRUSSIA, June 28.—Fournier was again first to arrive at the end here of the day's stage of the motor race. He was second and Girardot was third. Fournier thus adds to the Grand Duke of Luxembourg's prize which he won yesterday, the award offered by Hanover for the quickest journey from Paris to Hanover.

CHAS. WESTLEY LAMBETH DEAD. A Former Richmonder Dies Suddenly in Raleigh. RALEIGH, N. C., June 28.—(Special.)—Charles Westley Lambeth died suddenly at his home here to-night, aged 67. He was on the streets half an hour before his end. During the civil war he was in Parker's Virginia Battery. After the war he was a clerk in the State Auditor's office at Richmond, and then came here. He was Raleigh's City Clerk eighteen years, but he was born in Richmond.

THE WEALTHY AMERICAN WAY. Millions in London Charter Special Train to Take Them to Steamer. LONDON, June 28.—(Special.)—The millionaires of London are to be taken to the Continent by a special train to take them from London to Southampton this morning. The train will be chartered by the American steamer Deutchland, which is to sail for the United States to-day, chartered a special train to take them from London to Southampton this morning. The train will be chartered by the American steamer Deutchland, which is to sail for the United States to-day, chartered a special train to take them from London to Southampton this morning.

TWO MURDERS BY A NEGRO. PANTHER, W. VA., June 28.—Peter Price, a negro, cornered in a house by a determined band of infuriated citizens, bent on meting out summary justice to him, charged with insulting a lady, in a desperate effort to escape he shot and killed George Hooks and F. M. McGraw, and seriously cut Charles Davis. The murderer, a tall, thin, dark-skinned man, five feet six inches tall, was seen by the police. Price, on seeing his pursuers, took refuge in a small room in the rear of a house, and as they entered the room Price threw himself at them with the ferocity of a tiger, and with his knife in each hand, Hooks and McGraw fell to the floor. Two revolvers in the crowd were discharged at Price, inflicting but slight wounds. With one desperate swing of his knife he laid open Davis's abdomen, and then sprang from the window. He was pursued and captured by officers who hurriedly sent him to the jail at Welch, to await the vengeance of the infuriated populace. Hooks and McGraw were both well-known citizens, and indignation runs high.

NEW YORK SUSPENDED BANK. No News in Connection With Its Failure. NEW YORK, June 28.—There was no news to-day, in connection with the suspension of the Seventh National Bank. The temporary receiver, who was in charge, said there was nothing to be made public to-day.