PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION.

OFFICIAL REPORT.

Report of the Judiciary Committee Taken Up.

Friday, November 29, 1901.

The Convention met at 12 o'clock M.

Prayer by Rev. Richard McIlwaine, D. D.

The PRESIDENT: The Secretary will call the roll of members.

The Secretary called the roll, and the following delegates answered to their names:

Present: Messrs. George K. Anderson, Ayers, Barbour, Barham, M. H. Barnes, Thomas H. Barnes, Blair, Boaz, Bolen, Bouldin, Braxton, Brooke, Brown, Cameron, Clarence J. Campbell, Carter, Chapman, Cobb, Crismond, Dunaway, Eggleston, Epes, Fairfax, Flood, Gilmore, B. T. Gordon, James W. Gordon, R. L. Gordon, Gregory, Gwyn, Hamilton, Hancock, Harrison, Hatton, Hooker, Hubard, Hunton, Ingram, Claggett, B. Jones, Lindsay, Lovell, Mallwaine, Meredith, Miller, R. Walton Moore, O'Flaherty, Orr, Parks, Phillips, Pollard, Portlock, Quarles, Richmond, Rives, Robertson, Summers, Thom, Thornton, Turnbull, Waddill, Walker, Walter, Withers, Wysor, the President—65.

The PRESIDENT: It appears from the roll call that sixty-five members are present—more than a quorum. The Secretary will read the Journal of the last day's proceedings.

The Journal of the proceedings of Wednesday last was read and approved.

PETITIONS AND MEMORIALS.

Petitions praying for the incorporation in the Constitution of a provision that no license to manufacture or sell intoxicating liquors shall be granted to any person except upon the written request of a majority of the registered voters in the precinct of the city, town or county in which such manufacture or sale is proposed to be conducted, were presented and referred to the Committee on Preamble and Bill of Rights, as follows:

By Mr. THOM, from 82 members of the Epworth League of the Epworth Methodist church of Norfolk city.

By Mr. FLOOD, from 75 citizens of Appomattox and other counties.

Memorials remonstrating against the appropriation of public funds to an institution wholly or partly under sectarian control, were presented and referred to the Committee on the Legislative Department, as follows:

By Mr. THOM, from the Junior Order United American Mechanics of Norfolk.

By Mr. INGRAM, from New South Council, No. 8, Junior Order United American Mechanics, of Manchester.

Mr. THOM presented a memorial of the Board of Directors of the Board of Trade and Business Men's Association of the city of Norfolk, remonstrating against the proposed adoption in the Constitution of the Barbour-Quarles resolution in regard to the regulation of the sale of intoxicating liquors, which was referred to the Committee on Preamble and Bill of Rights.

LEAVES OF ABSENCE.

Mr. DUNAWAY asked and obtained leave of absence for Mr. Willis for to-day and to-morrow.

Mr. LOVELL asked and obtained two days' leave of absence for Mr. Yancey, beginning to-day.

Mr. RIVES asked and obtained leave of absence for Mr. Thornton for to-morrow and Monday.

Mr. WALKER asked and obtained two days' leave of absence for Mr. Kendall, beginning to-day.

Mr. HARRISON asked and obtained three days' leave of absence for Mr. Keezell, beginning to-day.

Mr. THORNTON asked and obtained two days' leave of absence for Mr. Green, beginning to-day.

Mr. HOOKER asked and obtained two days' leave of absence for Mr. P. W. Campbell, beginning to-day.

LIST OF COMMITTEES.

The PRESIDENT: The Secretary will call the list of standing committees for reports.

The Secretary called the list.

THE JUDICIARY DEPARTMENT.

Mr. HUNTON: Mr. President, I move that the Convention resolve itself into Committee of the Whole to consider the report of the Committee on the Judiciary.

Mr. TURNBULL: I understand that the report of the Committee on Public Institutions and Prisons was not completed on Wednesday.

Mr. AYERS: It was not.

Mr. TURNBULL: I see no reason why we should not proceed with the consideration of that report to-day.

Mr. AYERS: I will state to the gentleman from Brunswick that the consideration of the report was not completed, and the reasons why I do not ask the Convention to go into Committee of the Whole to consider it further this morning is because several members of the Committee on Public Institutions are away.

Mr. TURNBULL: Very well.

Mr. HUNTON: I will state to the gentleman from Brunswick that it was only after consultation with the chairman of the Committee on Public Institutions that I made the motion.

Mr. TURNBULL: The reason why I asked the question was because I saw it stated in the papers that the report had been completed, and I did not so understand it.

The PRESIDENT: No report has been made to the Convention from the Committee of the Whole on the subject.

The gentleman from Fauquier, the chairman of the Committee on the Judiciary, moves that the Convention resolve itself into Committee of the Whole for the purpose of considering the report of that committee.

The motion was agreed to, and the Convention resolved itself into Committee of the Whole, Mr. Flood in the chair.

The CHAIRMAN: The report of the Committee on the Judiciary is before the committee.

Mr. HUNTON: Mr. Chairman, there have been very great doubts upon my mind as to whether it would expedite the consideration of this report to make any general explanation of it. I have, however, determined that, omitting all reference to details, I would make a brief statement of the system of courts the committee has agreed upon and the adoption of which it recommends to this body, in order that the members may have some general idea of the scheme outlined in the report.

The committee has given most careful, laborious and industrious consideration to the question of the courts of the Commonwealth, and it believes that it has considered every argument that can be adduced in favor of this or any other system to dispose of the judicial business of the Commonwealth.

Very early in the deliberations of the committee it was determined that the county courts as at present organized did not furnish the best judicial system for the State. It was a matter of very grave and earnest thought to determine whether those courts should remain constituted in a different fashion or whether they should be abolished and there should be a single system of courts between the justices of the peace and the Court of Appeals. The result of those deliberations was in favor of a single system of courts and the abolition of the county courts.

The committee has not been unmindful of a strong sentimental reason existing in the minds of the people of Virginia for a monthly court in every county of the State, but after due consideration, after weighing the matter in all of its various phases, it was determined that it was wisest and best to ignore this sentimental desire for a monthly court and to devote the efforts of the committee to giving to the State of Virginia a system of courts that should be thoroughly efficient and dispatch the business of the Commonwealth not only promptly but efficiently.

Mr. Chairman, the first consideration that weighed with the committee was to adopt a system which would be good, a system that would be of a high standard, a system which would give to the State the very best and the most efficient judiciary.

It was recognized that promptness in the dispatch of business was one of the first essentials. It was resolved that efficiency in every respect in this important department of government stood ahead of economy. Therefore, while the committee has had economy in view, it has deemed it wisest, in the first place, to give an efficient system of courts.

After the determination had been reached to abolish the county courts, the committee turned its attention to a desire to give courts of sufficient frequency to prevent delay in litigation both civil and criminal. So after determining to abolish the county courts and to substitute for them circuit courts, the first thing was to determine upon the frequency of the terms of the circuit courts so that there might be no delay in the business of the Commonwealth.

The report does not undertake to provide how many terms of circuit courts there shall be, because of the various conditions in the different sections of the State. In those sections where the criminal business is large it is desirable to have more frequent terms of the court than in other sections. Where the criminal business is not so large there is not such an imperative demand for frequent terms.

Therefore the committee determined that the circuit courts should not be required to hold so many terms a year in every county of the State, but the State was redistricted by the committee in such a manner as to permit not less than one term of the circuit court every two months in every county of the Commonwealth.

The districting has been done on those lines and with that idea in view. Yet we know there are certain sections of the State where the criminal business is extremely heavy, where a prisoner is entitled to a prompt trial, and the Commonwealth is interested in the prompt enforcement of its criminal laws and the avoidance of the expense incident to a long interval between terms. In such counties of the State there is also a greater proportion of civil business than in the eastern section of the State. Those sections of the State have been so districted as to permit monthly terms, so that the courts will be as frequent under the new system as under the old.

Therefore, this circuit court, constituting the only court between the justices of the peace and the Court of Appeals, has been recommended by the committee as the most efficient system of courts for the State.

The committee does not undertake to determine what is the jurisdiction of that court, because it absorbs all matters between those two tribunals. It covers everything whether civil or criminal.

Now, as to the civil business of the Commonwealth, it has been a matter of great regret that in the counties of the State of Virginia there has been too much delay to litigants in the determination of civil business. Under this new system, giving bi-monthly courts at least to every county in the State and to a very considerable number giving monthly courts for the transaction of civil business, the Commonwealth of Virginia will give to civil litigants a decision as prompt in all those matters as could be asked for.

There is probably not a lawyer within the sound of my voice who has not heard the lawns of Virginia criticised in the matter of the lack of promptness in the collection of debts and in the delay of decision in civil cases. Most of the counties of the State to-day have only two terms of the circuit court in a year. Under the new system they would have at least six, so that the terms at which civil business can be disposed of will be three times as many as under the old plan.

Now, let us look for a moment at the criminal business of the State. We know from the reports which have been made that there are certain portions of the State which have a very large amount of criminal business; and that other portions of the State where the criminal business is very small. We also know the costs to the State incident to delay in the trial of criminals. We further know that the Commonwealth is deeply interested in the prompt enforcement of its criminal laws.

It is believed that this new scheme gives flexibility, and that by a bi-monthly system of courts in the counties where there is not much criminal business it will be disposed of with fair dispatch and with but little delay to the criminal or to the Commonwealth, whereas in other sections of the State, where the civil business as well as the criminal business is large, the State has been so districted as to give monthly terms in those counties, so that there will be equal promptness in the dispatch of the criminal business, and there will be a term every month in which civil business can be disposed of.

Another matter of very serious consideration by the committee has been the apprehension that by a single system of courts having jurisdiction of both civil and criminal business there would be very great delay to counsel, to litigants, to suitors, and to witnesses in civil cases, growing out of the fact that the civil business was postponed until the criminal docket had been disposed of.

The committee endeavored as best it could to meet this phase of the case. It provided that there shall be not less than six terms of the circuit court in every county in a year, and it is contemplated, and is suggested in the report, that at certain of these terms civil business shall have the precedence and at certain of them criminal business, so that there will be a certain number of terms where the criminal docket is called first and disposed of, known essentially as criminal terms, and certain other terms at which the civil business is called first and disposed of, known as civil terms. But the committee contemplated that the Legislature should give to the judge of a circuit court the discretion, at any term where he believed that the public interest requires it, even though it were a civil term, to give a criminal case the precedence. The object of that idea was that there were certain criminal cases that should be most speedily disposed of. So it is believed that this single system of courts will afford to the Commonwealth of Virginia a speedy dispatch of civil business and almost equal promptness to the present system in the dispatch of criminal business.

There is one class of courts to which I desire to call special attention, that are not in harmony with the general plan of the committee. I refer to the corporation courts of cities having a population of less than ten thousand. In a number of those cities the business could easily have been disposed of by the circuit court without any hustings or corporation court. In others, the conditions were very different. The courts have not only been established for a number of years and the people have become attached to them and familiar with their methods, but they are essential, from local conditions, to the speedy dispatch of the business of these cities.

Those representations were made not only by the representatives of those cities upon the floor of this Convention, but by delegations from them. So the committee determined that the city courts in cities having a population under ten thousand should be preserved by the Constitution, the cities paying the entire salaries thereof, and that during their existence there should be no circuit court held for those cities. They stand without a dollar of expense to the Commonwealth and yet relieve the State of the necessity of having a circuit court for those cities.

However, there are some of those cities that recognize themselves that their courts should be abolished and a method for their abolition has been mapped out in the articles framed, by a provision that any of the cities which wish to abolish their corporation courts may do so at two popular elections, not less than twelve months apart. The object of requiring two popular elections to abolish the city court in any city of this class was this: A judge is very frequently required to pass upon rights and cases, a right decision of which involves great personal unpopularity and arouses a momentary antagonism; and it might be that one of the judges, because he had honorably discharged his duty as a judge, had aroused public sentiment in opposition to him, and that a single election might occur under those conditions and this court be abolished out of resentment at some decision that had been made by him. The committee believes that it would be unwise to expose the court and the judge to a vote under those circumstances, and that two elections should be required in order to abolish these courts, not less than twelve months intervening between them.

Now, this is the system of courts as formulated by the committee. It is believed that they will give a prompt and speedy decision of all causes within the Commonwealth of Virginia, and they will, in the opinion of the committee, give greater efficiency than the old system. So much for the system as to the counties.

Now, as to the cities. The courts in the cities of the Commonwealth—and I speak now of cities—as fixed by the judiciary article of the new Constitution; I mean cities having a population of over ten thousand: I have already explained as to those under ten thousand. The courts in cities containing more than 10,000 inhabitants remain exactly as they are now.

Now, that is the system of courts which this committee recommends shall be adopted for the future in this Commonwealth.

But it must be understood and recognized that the success of any judicial system depends largely upon the personnel of the judges who constitute the courts, and that you can have no efficient court unless you have an able judge and a clean judge to preside over it. Virginia has been greatly blessed in that respect, it seems to me in spite of the conditions with which it has been surrounded, because, in my opinion, the opposition to the continuance of the county courts in Virginia has grown out of the system which has been constantly growing into disfavor since the judge has been permitted to practice law and has held his place upon the bench, with all the evils that grow out of the system; and it is wonderful how clean and high they have kept, when you consider that fact and consider the evils of the system. The evil is the system itself.

Now, we believe that we can give a better system by the abolition of these courts wholly, but the success of the new system must depend largely upon the personnel of the courts. In order to get a judge of ability and character upon the bench, you must pay to that judge a salary upon which he can live according to the manner of life of those with whom he has been moving. You must pay him a salary somewhat commensurate with his earning powers while at the bar. With that in view, and believing that the efficiency of any judicial system depends very largely upon the personnel of the judge, believing that the salaries paid to the judges of Virginia have been disgracefully small and in no wise adequate to the labors imposed upon them, realizing and recognizing that the character of the men who have been willing to accept this office has been wonderful when they were unable to get from it such a living as the practitioner at the bar of some standing had been receiving in the same community, the committee deemed it essential to the success of this system that it should fix a minimum salary of all the judges of the Commonwealth.

It began with the Court of Appeals and ended with the city and the circuit judges. It has fixed a minimum salary. It has fixed the salary of the judges of the Court of Appeals at $4,000, which makes $20,000 cost to the State to-day instead of $16,000 under the old plan. Under the old system the salaries of the judges were regulated by no fixed principle. One judge of a circuit would get one salary, another judge another, as might be determined by the Legislature. This report fixes a principle in the payment of city and circuit judges. In this statement I do not include the judges in cities under ten thousand. It determined two things. First, that there should be a minimum salary fixed, and second, that one-half of it should be paid by the State and the other by the cities, or the cities and the counties composing the circuit, in proportion to their population.

We believed it was proper that the salaries should be so distributed, and that it would contribute to the general efficiency of the system. The article provides that while the judge shall receive his whole salary from the State (for it would be unfair for him to collect from each city and county composing his circuit), that the State treasurer shall be reimbursed by every such city and county.

Now, as to city courts, Mr. Chairman, it is believed that their salaries have been reasonably sufficient, and it is not contemplated that they shall receive more, under this report, than they are receiving to-day, but the report fixes the salary of the judges in cities exceeding thirty thousand—there are but two such cities in the State of Virginia, Richmond and Norfolk—at $2,500 and it gives to the cities a right to supplement those salaries to an extent to be determined by the cities, it being believed that the cities will keep their judges' salaries as at present.

Now in cities under thirty thousand the minimum salary of the city judges is fixed at $2,000 per annum. The salaries of the judges of the circuit courts are fixed at $2,500 per annum, to be paid one-half by the State, the other half by the cities and counties constituting the circuit, in proportion to their respective population.

The salaries now paid do not command the best judicial talent of the State, except at great financial sacrifice to the judge. It is believed the new system, with the salaries fixed by the committee, will command the very best judicial talent of the State. Now, so much as to the reasons for fixing the salaries, which are not large.

The idea of the committee was to make the judges of the courts work, to give them constant occupation, and to pay them fairly well for the labor they were doing. I can illustrate it probably better by my own circuit, which was the eleventh, because there have been fewer changes in that circuit than in almost any other in the State. It was composed of the counties of Loudoun, Fauquier, Fairfax, Prince William, Alexandria county and city, and the county of Rappahannock. The county of Rappahannock by the new apportionment is left out of that circuit. In the old circuit there were six judges who did the work under the former system without counting in the county of Rappahannock. They received for that work $5,762.70. Under the present system, leaving out the county of Rappahannock, there are only two judges for the purpose of discharging all of the duties, both civil and criminal, that the six men had distributed amongst them under the old system, and those two men are the judge of the circuit court and the judge of the corporation court of Alexandria, and at the salaries fixed by this report as a minimum they will receive $4,500 in salaries as against $5,762.70 under the old system, making for the same work, exclusive of the circuit court of Rappahannock the pay $1,262.70 less than under the old system. The theory of the committee is that the judges should be occupied and employed and have a fair remuneration therefor.

Now, the most difficult part of all this scheme, that which comes in conflict with local interests and local wishes and local desires, was the redistricting of the State with a view to putting the new system into operation. I can pay no tribute too high to the sub-committee who so earnestly, patiently, sought the best and the most philosophic districting that it was in their power, due regard being paid to those local interests.

By an examination it will be found that there are some circuits where the work is very much greater than it is in others. This is due to local conditions, and it is impossible to avoid it. There are some sections of the State where the litigation is very much heavier than in others. This fact and the earnest desire to give to every county of the State at least six circuit courts a year, and when you have made the districting of the State a difficult problem, it is believed that it has been well and philosophically done.

Now, while the committee has acted without economy being its first idea, its first idea being to give a good and efficient court system to the Commonwealth of Virginia, it is a matter of gratification and of pleasure to say that there is a direct saving to the Commonwealth of Virginia of a considerable sum of money in the actual salaries paid. I desire at the very outset to call the attention of the committee to an error in the tables as to the figures. On page 6 of the report, line 11, it says, "salary of judge of Hustings Court of Richmond (paid by the State), $1,000." This is an error, and an error in following the table of the Auditor, where the first item given after the Hustings Court of Richmond, was the $1,000 which was really the salary of the clerk and was erroneously supposed to be the salary of the judge. That error follows throughout the report, but I think I can call attention to all of the changes it makes necessary. It would make the total cost of the old system of courts $133,140.86, instead of $134,140.86; it would make the amount paid by the State under the old system $55,800, instead of $56,800; and then further, it would make the total saving to the State between the new system and the old, $14,444.16, instead of $15,444.16.

We have also undertaken in this report to show how the salaries of the judges were paid under the old system and how in the new and to compare the cost to the State, to the counties, and to the cities, under both systems.

It will be found that under the old system the amount paid by the State was $55,800, the amount paid out of the county levy $47,244.16. That was for the salary of the county judges. They were paid wholly by the county. Then the amount paid out of the city levy was $30,096.70. Under the new system the total cost is $118,697.70, leaving this saving to the State of $14,444.16. Now the saving to the counties is very much larger than that to the cities. The counties paid for the salaries of their county judges $47,244.16. The cost now to the counties under the proposed system will be approximately $25,000, leaving a saving to the counties under the new system of $22,844.16.

There is put upon the State treasury an additional burden of about eight thousand and two hundred and eighty-five dollars, and a small additional burden upon the cities to keep the salaries of their judges as at present, leaving a net saving to the State, cities and counties by the proposed system of fourteen thousand four hundred and forty-four dollars and sixteen cents. But if you will remember it is contemplated that the corporation courts in some of the cities under ten thousand will be abolished, and this will bring an additional saving to the Commonwealth, in a very short time, in the judgment of the committee. It is gratifying to believe that a far more efficient system of courts will be given to the people of this Commonwealth and at less cost in salaries actually paid.

My friend, the gentleman from Richmond city (Mr. Meredith), has reminded me of one feature of very great advantage in my judgment, to the system, which I have failed to call attention, and that is this: It is possible that the business, either civil or criminal, in the various courts may become congested, and the committee sought with great earnestness for a relief from such a condition, and they have found the key to that situation, and without an additional burden upon the Commonwealth.

It is this: The power is given the Legislature to require any of the city judges to hold a circuit court under such conditions as it may deem proper. The idea is to pursue this course if the business in a circuit became congested. Take, for instance, my own as an illustration. I believe it is the sixteenth judicial circuit under the proposed system, one of the largest in the State, the circuit judge now having all the counties except one and having jurisdiction of all the criminal and civil business. There is a corporation judge in the city of Alexandria, where the business will not fully occupy his time. It would be easy for the Legislature under those conditions to authorize the Governor to direct—or some other person, and these are matters of detail with which the committee did not undertake to deal, and I merely give you their idea of the plan—it would be an easy matter for the Legislature to authorize the Governor, when such conditions occur, to direct the judge of the city court of Alexandria to hold such circuit court in the sixteenth judicial circuit until the time had arrived when the congested conditions had passed away.

It seems to the committee that this provision gives flexibility to the system and removes any danger of a congested condition of business in any circuit of the State.

Mr. TURNBULL: Will my friend allow me to ask him a question?

Mr. HUNTON: Certainly.

Mr. TURNBULL: I understood you to state that the circuits were so arranged that you would have terms at least every two months. Do I understand you correctly about it, that the circuit court is to meet at least every two months?

Mr. HUNTON: At least every two months in every county of the Commonwealth and in many of them very much more frequently.

Mr. ROBERTSON: Will the chairman allow me to ask him a question?

Mr. HUNTON: With pleasure, in a moment. Some of them are so districted as to permit monthly terms.

Mr. ROBERTSON: Is it not a fact that the report only provides that the Legislature shall fix the terms?

Mr. HUNTON: Yes, sir, as I have already stated.

Mr. ROBERTSON: It is provided that—

"The number of terms of the circuit courts which shall be held for each county and city shall be such as may be prescribed by law."

Mr. HUNTON: Yes, sir.

Mr. ROBERTSON: There is nothing in here to indicate that they shall meet once every two months.

Mr. HUNTON: I had so stated in the earlier part of my remarks.

Mr. ROBERTSON: It is so arranged that the Legislature can provide as to the terms.

Mr. HUNTON: Yes, sir. I had already stated that the article of the Constitution proposed, did not fix the number of terms of court because of the different conditions in different sections of the State, but that it had redistricted the State in such manner as to permit bi-monthly courts in every county of the Commonwealth, and in certain other counties, where the criminal and the civil business were both large, it so redistricted the State as to permit monthly terms of the court. The Constitution does not provide the number of terms to be held of the circuit courts. It was believed that it was wiser to leave it to the Legislature.

We were advised that there are some counties that did not want a circuit court every two months. We believe it would be unwise to require those counties, where the desire was not entertained and the business did not demand it, to have a court every two months, but it was believed that in putting this new system into operation the State should be so districted as to permit at least one court every two months, when it was desired by the county.

Now I was speaking of the saving to the State and the saving to the counties under the new plan. I said that fourteen thousand four hundred and forty-four dollars and sixteen cents was saved by the new system over the old to all the people of the Commonwealth and that thewty-two thousand two hundred and forty-four dollars and sixteen cents was saved to the counties of the Commonwealth of Virginia and they get, in the opinion of the committee, a much more efficient system of courts.

But, gentlemen of the committee, those are the saving in dollars and cents in the salaries to the judges who hold the courts. In my opinion the saving incidental to the improved system, to the better judges, to the greater ability upon the bench will be infinitely greater than can be measured by the dollars and cents paid in salaries. Under this system, with abler and betted judges, new trials and appeals will be less frequent; reversals of the lower courts will be less frequent; the saving incident to the jury system will be very large; and the selection of such judges as it is believed these salaries will command, will indirectly save to the Commonwealth of Virginia a sum three or four times larger than in the salaries paid to the judges who actually hold the courts.

I have already said that in cities where the population is between ten thousand and thirty thousand the city judges, under the proposed plan, get a minimum salary of $2,000. In some instances that is more than they get under the present system. But what is the reason for that? Under the old system the county court judges and certainly some of the city court judges, had the right to practice law, a right that it was believed by this committee should be taken away from every judge and it is provided in the new Constitution that no judge shall practice law, either within or without the borders of the State of Virginia, or hold any other office of profit or trust, except that a judge of a corporation court in a city of a population under ten thousand, so long as those courts may exist, may be commissioner in chancery of the circuit court of the county in which the city is situated.

Those were the reasons which led the committee to go into the salary matter. Those were the considerations that led them to believe that it would command the very best judicial talent in the State of Virginia for the new system of courts. They believed that this new system and its success would depend upon the personnel of the judges thereof, and that these salaries would command the best judicial talent of the State.

I do not know that I can aid this committee any further in the consideration of this report. I have thought it was wise to give you some of the reasons which animated the committee in their decision as to the system of courts, that you might, at the very outset, consider these matters and all of the discussion with reference thereto bearing these facts in mind.

It is believed that that system of courts has been proposed which if adopted by this body will give a high and a pure judiciary will give a prompt dispatch of business, civil and criminal, and will restore to the people of Virginia a judiciary that will be an ornament to the State, and which will largely contribute to the good name and fame of this dear old Commonwealth, so beloved by us all.

I trust that the report may commend itself to the body.

Mr. TURNBULL: Will my friend allow me to ask him a question?

Mr. HUNTON: With pleasure.

Mr. TURNBULL: I wish to direct his attention to a matter which has occurred to me in connection with the report. Why was it deemed necessary to have a circuit court in the smaller cities of over ten thousand inhabitants, where they will have a corporation court with concurrent jurisdiction? For instance, take the city of Petersburg. Why is it necessary that it should have a circuit court when it has a corporation court which could attend to all the business?

Mr. HUNTON: In some of those cities it was deemed necessary. It entails but little additional cost, and taking out those cities would probably not have reduced the number of circuits. Circuit Courts have been held in these cities and it was deemed unwise to abolish them.

Mr. THOM: I wish to call the attention of the Chairman of the committee in this connection to which he has already refered in general terms. I will cite in answer to my friend from Brunswick (Mr. Turnbull,) to the case in Newport News, which might be classed with Petersburg, and other cities, and where a circuit court is absolutely essential.

Mr. HUNTON: There are some cities as I said in general terms without going into detail, where a circuit court will be necessary.

Mr. TURNBULL: I will state to my friend that the only reason why I made the inquiry was because I thought possibly we could have fewer circuit courts in cities having corporation courts with concurrent jurisdiction.

Mr. HUNTON: I am most delighted to have any inquiry propounded. There are some cities where it was deemed impossible for the business to be disposed of by the city courts alone. As has been suggested by my friend from Norfolk, (Mr. Thom,) Newport News is a very striking illustration. It is a new, young and growing city, and its business interests are very large, and its court business heavy. With the two courts there it is difficult now to dispose of the business in that city.

It was believed to be essential to the general scheme to permit the circuit courts and the city courts to remain in cities between ten thousand and thirty thousand inhabitants, an additional reason being the one I have suggested, that the business of the circuit court may become congested and in order to relieve that congested condition it is contemplated that the Legislature should give relief in such shape or form as it may deem wise; and that wherever that condition of affairs exists the judge of the city court shall be called upon to perform the duties of the circuit judge of that or any other circuit of the State, and thus relieve the congested condition. There was an apprehension on the part of some that there might be congestion in certain sections of the State, and how to relieve it was the question. Now by leaving the two together the opportunity of relief which can be afforded to meet extraordinary conditions is within the control of the Legislature.

The CHAIRMAN: The question before the committee is section 1. The Secretary will read section 1 of the report.

Mr. HUNTON: If the Chair will pardon me, there was one other mistake to which I failed to call the attention of the Committee of the Whole. On page 7 of the report it gives the salary of the judge of law and chancery court of Norfolk at $2,000 and the salary of the judge of the corporation court of Alexandria at $2,500. Those figures are just reversed, the $2,500 belonging to the law and chancery court of Norfolk, and the $2,000 to the corporation court of Alexandria.

I also desire to call attention to the printing. I do not think we have been extremely fortunate in the hands of the printer. It was endeavored to have the new articles of the Constitution and the old printed in parallel columns that they might be compared, but the printer has evidently thought that the provisions should correspond, when it was not so intended. So in many cases he has gotten them reversed, and a comparison is made difficult thereby. In all other respects I believe the report is correct.

The CHAIRMAN: The Secretary will read section 1.

The Secretary read as follows:

"Sec. 1. There shall be a Supreme Court of Appeals, circuit courts and city courts. The jurisdiction of those tribunals and the judges thereof, except so far as the same is conferred by this Constitution shall be regulated by law."

Mr. ROBERTSON: I desire to offer an amendment to section 1 which goes to the substitution of the old section contained in the present Constitution for the section reported by the Committee. My amendment is that after words "circuit courts" the words "and county courts" shall be inserted in line 3, so that the section will read, as in the old Constitution:

"There shall be a Supreme Court of Appeals, circuit courts, and county courts. The jurisdiction of these tribunals, and the judges thereof, except so far as the same is conferred by this Constitution, shall be regulated by law."

Before I say anything about this section, Mr. Chairman, I wish to state that I should like very much to have this matter laid over. It involves the whole question of the scheme of courts. I had no idea that this mater would be precipitated upon us to-day. There are two other reports that have not been completed and which are pending befort the Committee of the Whole I desire to present my views to the Convention, whether they be worthless or not, upon this subject. I do not think that I can do so this morning with justice to myself and to those who have not been studying this question. I should like to have the sense of the committee on the motion I make, that section 1 be passed by for the present.

The CHAIRMAN: The gentleman from Roanoke moves that section 1 be passed by for the present.

The motion was agreed to.

The CHAIRMAN: The Secretary will read section 2.

The Secretary proceeded to read section 2, and read as follows:

"The Supreme Court of Appeals shall consist of five judges, any three of whom may hold a court"—

Mr. CAMERON: I ask that for a moment the reading of section 2 be suspended.

The CHAIRMAN: The Secretary will suspend.

Mr. CAMERON: I have been delegated to take charge of section 2, representing therein the majority of the Judiciary Committee. The gentleman from Roanoke (Mr. Robertson) will take charge of the opposing views, held by a minority of that committee. The reasons which he has given for passing by section 1 for the present apply with still greater force to section 2, which is long, which is comprehensive, and which covers the whole question of the jurisdiction of the Court of Appeals.

I, therefore, at his suggestion, to which I agree, ask that section 2 may also be passed by for the present.

Mr. HUNTON: I had agreed with the gentleman from Petersburg that I would make no opposition to his motion to pass by section 2, and I shall certainly live up to that agreement. I did not know that it was the purpose to move to pass by section 1, which involves the whole system of the courts of the Commonwealth, and yet I hesitated to oppose the request of the gentleman from Roanoke when he put it upon the ground of his own physical condition. But after that section has been passed by, it seems to me that we can make no progress in the consideration of the report under those conditions, as almost every section of the report would be involved if the county courts are retained. As the motion of the gentleman from Roanoke would go to the very root of the system, and as section 1 has been passed by, it seems to me that it would be impossible to consider the report at this time.

Mr. ROBERTSON: I suggest that the committee rise.

The CHAIRMAN: Does the gentleman from Fauquier move that the committee rise?

Mr. HUNTON: I therefore move that the committee rise.

The motion was agreed to, and the committee rose.

The President, having resumed the chair, Mr. Flood reported that the Committee of the Whole had made some progress, but had come to no conclusion upon the matter referred to them.

Mr. HARRISON: I move that the Convention adjourn.

The motion was agreed to, there being on a division ayes 26, noes 24, and, (at 1 o'clock and 12 minutes P. M.) the Convention adjourned until to-morrow Saturday, November 30, 1901, at 10 o'clock A. M.

VIRGINIA MILITIA.

In the War of the Revolution—Interesting Notes.

(By J. T. McAllister, of Hot Springs, Copyrighted.)

When numerous persons have for years been searching for the date from which to compile history, it seems little less than remarkable that so little is known of the services of the Virginia militia in the Revolutionary war. This may perhaps be partly accounted for by the fact that with the exception of the State of Massachusetts there are in existence no muster rolls of any of the State militia in the Revolutionary war. Yet this does not wholly and satisfactorily explain the matter. Nor it is making for our credit that it is so. Other States have undertaken this work and they have added the list of their militia to the other troops furnished by them and are not hesitating to assert the claim that Virginia did not furnish her full quota of troops in that war, because forsooth she has not been as active in gathering her historical data. That such a statement is without foundation is evident to any one who will examine the official records. "In 1790, the white population over 16 years of age, in Pennsylvania and Virginia, was about the same, the former being 110,788, and the latter, 110,934, and yet according to the official estimates presented to the first Congress by the Secretary of War, General Henry Knox, of Massachusetts, Pennsylvania furnished 34,965 soldiers, and Virginia, 56,721." (See Southern States in American Union, by Curry, p. 48.) "According to General Knox's report the North sent to the army 100 men for every 227 of military age, as shown by the sensus of 1790, and the South 109 for every 209. In 1848, 1 out of every 62 of the men of military age, in 1790, in the North was a Revolutionary pensioner, and 1 out of every 110 in the South." (See same book, p. 50.)

Some years ago I became interested in gathering data as to the Revolutionary war, as a matter of recreation, at odd times, and when my attention was directed by an article in the Virginia Magazine of History and Biography to this scarcity of information as the Virginia militia, I was surprised and gratified to find that in my collection there was, perhaps, more authentic information in regard to these troops than could be found elsewhere. It is my purpose to give in a series of papers some of the facts which I have gathered with reference to the troops which went out from the different counties. It seems to me that this may be of interest to those whose ancestors were in the companies named and also of more general interest as furnishing some idea of the number and services of these troops. I have been struck with the paucity of information on this subject in the local histories I have examined, and I am inclined to think that few of the troops which will be mentioned by me have been mentioned in these histories.

I wish to state in the outset that while my manuscripts furnish information in regard to numerous troops, it is by no means or in any sense a complete list. But it is one that I am adding to from time to time as opportunity offers.

And first as to the companies furnished by Albemarle county in the Virginia militia.

In the year 1777 Captain Landon Jones raised a company of militia in this county of which James Woods was lieutenant. This company was in service for six weeks, attached to the First Virginia Regiment under General Nelson. A month later another company of militia was drafted in the county by Captain John Harris, with Ralph Thomas as lieutenant which also served for six weeks and later on Captain Mask Leake drafted another company of militia in this county which served two months. John Bailey was a member of all these companies.

In the year 1780, Captain John Henderson raised a company of militia in this county, which served for two months at Cabbin Point under Major Quarles and Colonel Holt Richardson. Jesse Lewis was a member of this company.

In December 1780 Captain William Grayson raised a company of militia in this county, with William Gooch as Lieutenant Francis Montgomery as ensign and Tarlton Woodson as orderly sergeant, which was discharged in the latter part of March, 1781, after having served three months. This company received arms at Richmond and was received into the army by General (or Colonel) Nelson at Yorktown. During this time there were two other companies joined with this; both from Amherst county, one under Captain James Barnet and the other under Captain Tucker. Claudius Buster was a member of this company, from Albemarle.

Prior to the 1st of March, 1781, Captain James Garland had a company of militia from this county guarding the prisoners at the Albemarle Barracks, and Captain Garland was shot there while engaged in this service. There were also companies in this service prior to March 1st of militia from this county under the command of Captain Hunten and Captain Montgomery.

About the first of March, 1781, under the laws then in force a draft was made of every fourteenth man of the militia for a term of eighteen months' service and Captain Benjamin Harris raised a company in this way in Albemarle of which Jessie Beck was sergeant. This company rendezvoused at Chesterfield Courthouse, where it was attached to a regiment commanded by Colonel Thomas Posey and Major Finley. It served through the seige and taking of Yorktown. It was then marched with part of the regiment to Cumberland Courthouse, and went into winter quarters. In the month of February, 1782, this company was ordered South for service in Georgia and remained there till November, 1782, when it returned to Cumberland Courthouse and was discharged. Each member of it was given $4,000 in paper money for hisk services, but on account of the depreciation in value this was really worth very little.

Samuel Barksdale and Jesse Lewis were members of this company.

In January, 1781 (about the 6th), a company of militia was raised in this county with John Harris as captain, Ralph Thomas and Thomas Jones as lieutenants, and William Jarman, ensign. This company, of which Leonard Drumheller and John Hogg were members, marched to Richmond, where it received arms, from there to Williamsburg, thence to Half-Way House (between York and Hampton), where it was stationed some time. It returned to Richmond and was discharged in March.

In May, 1781, it was rumored that the British were on their way to Richmond and there was a call for a great many men from Albemarle, and among other companies of militia which went out at that time were the following companies: Company of Captain Daniel White, with Lieutenant Nathaniel Garland and Ensign Francis Montgomery; Captain Mask Leake's company; Captain Nicholas Hamner's company in which Charles Hudson was ensign; Captain John Burke's company; Captain Laney's company; Captain Miller's company. Among the privates in this service I have the names of Leonard Drumheller, Claudius Buster, and John Hogg. All these companies marched and served under Colonel Reuben Lindsay. These companies marched to the neighborhood of Richmond, where they joined the main army under LaFayette, began what was dubbed "the wild goose chase." After marching and countermarching for some days, the army moved in a northwesterly direction until it got as far as the county of Fauquier, thence to Raccoon Ford, where General Wayne's troops from Pennsylvania met the army, and the forces of General Steuben also met the army in Albemarle.

While the army was on this route, the British under Tarleton advanced to Charlottesville, routed the assembly and destroyed some property and then retreated, the American army following. The American army in returning crossed the counties of Orange, Louisa, and lower part of Albemarle, passing down "the Three Notch road." The route of the army across these counties for a number of years continued to be called the "Marquis road." These companies followed the British on till they took shipping at Jamestown, where there was a battle and a number of the militia were killed as well as some regulars. They then went to Maupins (Morben) Hill, about sixteen miles below Richmond, where they remained until August, 1781, when they were discharged.

In September, 1781, Captain Robert Sharp raised a company of militia in this county, which served at the siege of York under Colonel Richardson.

Robert Mansfield, a Revolutionary soldier, who enlisted first in Albemarle on the 11th of March, 1779, in a company of which Garland Burnley was captain and Thomas Porter was lieutenant, and served under those officers, made a sworn statement, of which I have a copy, that after being discharged at Winchester on the 11th of April, 1781, and returning to his home in Albemarle, in the spring of 1781, he was again called into service in a militia company from that county, of which Henry Burke was captain, and served under Colonel Reuben Lindsay in the First Regiment, Lawson's Brigade, and was discharged at the end of two months at Morben (Maupin) Hills, and that later on he served again for two months in another company, the names of the officers of which are not given, which was at the siege of Yorktown, till Cornwallis surrendered and helped to guard the prisoners as far as Noland's Ferry.

There were