Proceedings of the Constitutional Convention

OFFICIAL REPORT.

(CONTINUED FROM PAGE 12.)

to the notice of the Convention. Some time ago when the report of the Committee on the Legislative Department was under consideration, the Convention decided against what is called the hold-over Senators. The member from Appomattox, on the following day, offered a resolution to rescind that action and at the same time accompanied the motion to rescind with another resolution proposing that Senators should be elected as they now are, every four years. The point of order was made by the gentelman from Albemarle (Mr. Boaz), that the resolution was not in order. The Chair, without any opportunity for reflection, determined to overrule the point of order. Subsequent to that action the gentleman from Danville (Mr. Withers) offered an ordinance or resolution to rescind the action of the Convention providing for the election of the judges of the Supreme Court by the joint vote of the General Assembly. In accordance with the precedent established as to the report of the Committee on the Legislative Department, that resolution, with another accompanying it, providing that they should be elected by the people, was referred to the Committee on Judiciary.

The Chair has no difficulty whatever in holding that the point of order raised by the gentleman, under these circumstances, should be overruled. If, hereafter, it should appear that the Chair is in error, when the Committee to whom the matter is referred shall make their report, the gentlemen will have ample opportunity to raise the point. You will observe that Rule 9 provides that a question once determined must stand as the judgment of the Convention and shall not again be drawn into debate except on a motion to reconsider or rescind. The Chair has not been able to find the word "rescind" in any code of rules adopted by any other deliberative body. He finds that in the United States Senate the action of the Senate in expunging the resolution censuring General Jackson for his conduct at New Orleans was called a recision. The action of the Senate on that occasion was called a recision or expunging of the resolution theretofore adopted. The Chair thinks that this is equivalent to a bill to repeal an act of an Assembly or an act of Congress which has passed into law. It is, to all intents and purposes, an ordinance of repeal. If the Convention shall be of the opinion, after full reflection, that they have made a grave mistake in regard to any matter, the Chair thinks an ordinance of repeal would be in order. But that ordinance must take the ordinary course. It must go through all the regular stages observed in deliberative bodies. It must be referred to the proper committee and duly considered and reported back to the Convention. The Chair thinks that the proper course of procedure as to the resolution to rescind Section 13 of Article 14 relating to the Executive Department, adopted by the Convention on the 26th of February, 1902, will be to refer it to the Committee on the Executive Department for consideration and report. When that committee, after due consideration, shall have made the report, the gentleman from Danville, or any other member, may raise the point of order in regard to the action proposed providing that the State Treasurer shall be elected by the joint vote of the two Houses of the General Assembly for the term of four years. The Chair begs the Convention to bear in mind he only decides now that the motion to rescind is in order, provided it passes through the regular stages. He does not hold and has not heretofore held that a motion to reinstate into the ordinance what has been deliberately stricken out by the Convention, as to which a motion to reconsider has been made and voted down, would be in order. That is a different question.

The Chair overrules the point of order and refers the resolution to the Committee on the Executive Department. (Applause.)

Mr. PORTLOCK: I desire to give notice now that I will offer a resolution similar to that offered by the gentleman from Rockbridge, with reference to the office of the Secretary of the Commonwealth. I will submit it in writing.

PREAMBLE AND BILL OF RIGHTS.

Mr. GREEN: I move that the Convention now take up the report of the Committee on the Preamble and Bill of Rights.

The motion was agreed to.

The PRESIDENT: The Secretary will read section 1.

The Secretary read as follows:

"Sec. 1. Every householder or head of a family shall be entitled, in addition to the articles now exempt from levy or distress for rent, to hold exempt from levy, seizure, garnishment, or sale under any execution, order or other process issued on any demand for a debt contracted since the 15th day of June, 1870, his real and personal property, or either, including money and debts due him, to the value of not exceeding two thousand dollars, to be selected by him: provided, that such exemptions shall not extend to any execution, order, or other process issued on any demand in the following cases."

Mr. JAMES W. GORDON: I move to amend section 1, in line 8, by substituting the word "one" for the word "two" before the word "thousand."

Mr. CARTER: I call for the pending question.

The pending question was ordered.

Mr JAMES W. GORDON: I call for the yeas and nays.

The yeas and nays were ordered, and being taken, the result was announced, yeas, 21; nays, 39, as follows:

Yeas—Messrs. Barbour, Chapman, Cobb, Earman, James W. Gordon, Gwyn, Hamilton, Hardy, Hatton, Claggett B. Jones, Meredith, Moncure, Mundy, Orr, Pollard, Portlock, Robertson, Stuart, Turnbull, Walter, and Willis—21.

Nays—Messrs. Allen, George K. Anderson, Ayers, Manly H. Barnes, Thomas H. Barnes, Braxton, Brown, C. J. Campbell, Carter, Davis, Dunaway, Eggleston, Epes, Fairfax, Garnett, Gilmore, Green, Gregory, Hancock, Harrison, Ingram, G. W. Jones, Lindsay, McIlwaine, Miller, R. Walton Moore, Parks, Pedigo, Richmond, Rives, Summers, Tarry, Thom, Thornton, Waddill, Watson, Withers, Wysor, and the President—39.

Not Voting—Messrs. W. A. Anderson, Barham, Blair, Boaz, Bolen, Bouldin, Bristow, Brooke, Cameron, P. W. Campbell, Crismond, Daniel, Fletcher, Flood, Gillespie, Glass, B. T. Gordon, R. L. Gordon, Hooker, Hubard, Hunton, Keezell, Kendall, Lawson, Lincoln, Lovell, Marshall, Thomas L. Moore, O'Flaherty, Pettit, Phillips, Quarles, Smith, Stebbins, Vincent, Walker, Wescott, Wise, Woodhouse, and Yancey—40.

So the amendment was rejected.

Mr. ROBERTSON: I desire to offer an amendment by adding to this section a subsection to be numbered 7; by adding the words:

"For any debt or demand incurred prior to the filing of the claim for such exemption."

Mr. GREEN: Mr. Chairman, I want to call—

Mr. ROBERTSON: I hope the gentleman will not call for the pending question.

Mr. GREEN: That is what I was going to do.

Mr. ROBERTSON: It does seem to me that when people offer amendments to sections here they ought to be allowed to explain what the amendment means. The gentleman from Danville is thoroughly acquainted with what this section is, because he, at one time, told me he was heartily in favor of it, when I explained it to him. He has changed his opinion on that subject and is now so opposed to it that he does not desire me to explain it to this Convention.

Mr. GREEN: Mr. President, I feel constrained to say that the gentleman from Roanoke is entirely mistaken. I never told him anything of the kind.

Mr. ROBERTSON: I understood the gentleman to say that he was in favor of it at one time. Of course if he did not intend to give me that impression I accept his statement. I certainly understood him to say he was in favor of it.

A resolution was offered here some time early in the session of this Convention accompanied by petitions——

Mr. THORNTON: Mr. President, I wish you would try to preserve order here. It is impossible for us to hear.

The PRESIDENT: The Chair desires to say that it is utterly impossible for him to preserve order in this hall without the co-operation of the members, and he appeals to them, on their own account and for their own sakes, to abstain from conversation in order that the business of the Convention may satisfactorily proceed.

Mr. ROBERTSON: Mr. President, as I was stating, this amendment is offered in pursuance of a resolution that I presented to this Convention early in the session of the Convention, accompanied by petitions signed by every board of trade or similar board in the State of Virginia. The Chamber of Commerce of the city of Richmond, and of other cities in this Commonwealth, sent petitions here on behalf of the business men, merchants and manufacturers of this State, requesting this Convention to make such changes in the homestead law as would protect the retail traders of this Commonwealth, who deal with the people claiming this homestead exemption. I submit to this Convention that the homestead law in Virginia, while on its face it purports to be a protection to the families of poor people, has been used as an engine of fraud to cover up the property of people in failing circumstances, and has not accomplished the object for which its framers originally intended it.

These merchants claim that they either have to refuse credit to people on these open running accounts, or they are put in the position of being beaten out of their debts against people, when they are in failing circumstances, by the homestead exemption being claimed. It is a well-known fact that where a man goes to a bank to borrow money and gives a note, or where he gives a bond, or anything of that kind, the homestead waiver of exemption is always put in that note, and people of that kind are protected. But when a man goes to a store for the purpose of buying groceries and the necessaries of life, it is the universal custom not to require a waiver of the homestead.

Gentlemen may say, and it was argued in committee, that everybody knows what the law is, and they have a right to demand a waiver of the homestead. That is true, but we all know, as a matter of fact, that that is not done, and that these retail merchants would be seriously injured if they demanded of a man that he should sign a paper waiving his homestead as to open accounts of a retail nature, which every one of us has to contract with these people.

The practical working of this homestead law has been that when a man fails and his estate is about to be wound up and his property is turned in for the purpose of paying off his debts, the bankers and other people who have given him credit on paper security in the nature of notes and bonds, get the benefit of the waiver of the homestead, and the other people do not get the benefit of it. It is the rarest thing that a man's family ever does get the benefit of his homestead exemption. The result is that a preference is created between creditors of one class and creditors of another class, and in nine cases out of ten a man's family has no benefit from it whatsoever.

I respectfully submit that the result of that is to create fraudulent preferences in favor of one class of people over another. It is a serious inconvenience, a serious injustice, to a large class of our merchants in the State of Virginia. I do think that when a respectable body of men like that come before the Convention and ask the Convention to do something to protect their interests, certainly the request ought to be considered, and not turned down as a matter of course.

The main argument that I heard made against this matter was that it would be unpopular with certain people in this Commonwealth, that it would endanger the adoption of this Constitution. In the first place, I do not believe that is true. I do not believe there is any body of men in the Commonwealth organized together for the purpose of beating their creditors out of the just debts they owe them. People claim the benefit of this homestead exemption when they get into failing circumstances. Most men are hopeful, and do not expect to get into such circumstances as that, and there is no organized band of people in the Commonwealth who would undertake to fight this Constitution if we do justice about this matter. They are not organized. You might just as well say that if we provide here for the proper enforcement of the criminal laws of the Commonwealth, the criminals of the Commonwealth would vote against the Constitution in order to prevent those laws being adopted.

I am aware of the fact that some demagogues, some people who want to defeat this Constitution, may go around amongst the people and undertake to say we are depriving the poor man of his exemption, but I do not believe in listening to that kind of talk. We must take some risks. We must submit to the people a Constitution that we are willing to defend on the grounds of reason and right, and not adopt a Constitution simply because we think it will be popular.

I respectfully submit that if we put this provision in here it can do no harm to anybody. I, for one, do not believe this homestead law has done any good, in 99 cases out of 100. In some cases where a man dies, I admit his wife and children have received the benefit of it. I believe every lawyer in this body who has had any large practice in Virginia will bear me out in saying that the homestead law as it stands has proved to be a perfect failure, so far as concerns protecting the rights of a man's family and keeping them from being put into the poor-house, but, on the contrary, it has been used as an engine of fraud and oppression, and has given one class a preference over another under the law which allows people to waive the exemption.

It seems to me the opinion of these gentlemen in the Chamber of Commerce in Richmond, the merchants in Danville, Charlotteville, Roanoke, Petersburg and Norfolk, men who have seen the practical workings of this thing, ought to have some weight. Although I was overwhelmingly turned down by the committee that had this matter in charge, I considered it my duty to present it here to the Convention and let them do what they think proper with it.

Mr. AYERS: I call for the pending question.

The pending question was ordered.

Mr. TURNBULL: I should like to have the amendment read.

The Secretary read as follows:

Add at the end of section 1, as independent sub-section 7, as follows:

"For any debt or demand incurred prior to the filing of the claim for such exemption."

The PRESIDENT: The question is on agreeing to the amendment offered by the gentleman from Roanoke (Mr. Robertson).

Mr. JAMES W. GORDON: I call for the yeas and nays.

The yeas and nays were ordered, and, being taken, resulted, yeas 26, nays 36, as follows:

Yeas—Messrs. W. A. Anderson, Thomas H. Barnes, Chapman, Fletcher, James W. Gordon, Gwyn, Hamilton, Hardy, Hatton, Claggett B. Jones, Keezell, Lincoln, McIlwaine, Meredith, Moncure, R. Walton Moore, Mundy, Orr, Pollard, Portlock, Robertson, Tarry, Thom, Turnbull, Walter, and Willis—26.

Nays—Messrs. Allen, George K. Anderson, Ayers, Barbour, Manly H. Barnes, Braxton, Brown, C. J. Campbell, Carter, Davis, Dunaway, Eggleston, Epes, Fairfax, Garnett, Gilmore, Green, Gregory, Hancock, Harrison, Ingram, G. W. Jones, Lindsay, Miller, Parks, Pedigo, Phillips, Richmond, Rives, Summers, Thornton, Waddill, Watson, Withers, Wysor, and the President—36.

Not Voting—Messrs. Barham, Blair, Boaz, Bolen, Bouldin, Bristow, Brooke, Cameron, P. W. Campbell, Cobb, Crismond, Daniel, Earman, Flood, Gillespie, Glass, B. T. Gordon, R. L. Gordon, Hooker, Hubard, Hunton, Kendall, Lawson, Lovell, Marshall, Thomas L. Moore, O'Flaherty, Pettit, Quarles, Smith, Stebbins, Stuart, Vincent, Walker, Wescott, Wise, Woodhouse, and Yancey—38.

So the amendment was rejected.

The PRESIDENT: If there are no further amendments to section 1 the question is on agreeing to that section as read.

Section 1 was adopted.

Mr. GREEN: I move to reconsider the vote by which section 1 was adopted.

The motion was rejected.

The PRESIDENT: The Secretary will read section 2.

The Secretary read as follows:

"Sec. 2. The said exemption shall not be claimed or held in a shifting stock of merchandise."

Mr. MEREDITH: I offer, as an amendment, to be added to section 2, the following language:

"Nor as to a debt created in the purchase of merchandise by a merchant or manufacturer for sale or use in carrying on a store or manufactory."

That allows, gentlemen, the protection to be given to these merchants which they are asking for. We do not touch any individual who simply wants to claim exemption against a debt, and who does not carry on trade, but we all know that the breath of trade is credit, and this homestead exemption has simply tended to destroy the credit of the honest merchant.

Mr. GREEN: Individually I am willing to accept that. I cannot speak for the committee, but I am personally willing to accept the amendment.

Mr. MEREDITH: If you will give us that, gentlemen, we will have the protection that the wholesale merchants desire, and at the same time you will allow men not in trade to claim the homestead exemption if they wish it. It is simply a matter between merchant and merchant. It is for the benefit of trade, and we ask for the protection of the merchants of this State that you will adopt this amendment.

The PRESIDENT: The Secretary will read the amendment offered by the gentleman from Richmond (Mr. Meredith).

The Secretary read as follows:

Add at the end of section 2 the following:

"Nor as to a debt created in the purchase of merchandise by a merchant or manufacturer for sale or use in carrying on a store or manufactory."

The PRESIDENT: The question is on the amendment offered by the gentleman from Richmond.

Mr. MEREDITH: I call for the yeas and nays.

The yeas and nays were ordered and, being taken, resulted, yeas 27, nays 31, as follows:

Yeas—Messrs. Allen, Barbour, Brown, Chapman, Davis, Earman, Epes, Fairfax, James W. Gordon, Green, Hamilton, Hardy, Ingram, Keezell, Lindsay, McIlwaine, R. Walton Moore, Mundy, Orr, Pedigo, Pollard, Portlock, Richmond, Robertson, Tarry, Turnbull, and Willis—27.

Nays—Messrs. George K. Anderson, W. A. Anderson, Ayers, Manly H. Barnes, Thomas H. Barnes, Braxton, C. J. Campbell, Carter, Dunaway, Eggleston, Fletcher, Garnett, Gilmore, Gregory, Gwyn, Hancock, Harrison, Hatton, G. W. Jones, Miller, Moncure, Parks, Phillips, Rives, Summers, Thornton, Walter, Watson, Withers, Wysor, and the President—31.

Not Voting—Messrs. Barham, Blair, Boaz, Bolen, Bouldin, Bristow, Brooke, Cameron, P. W. Campbell, Cobb, Crismond, Daniel, Flood, Gillespie, Glass, B.T. Gordon, R. L. Gordon, Hooker, Hubard, Hunton, Claggett B. Jones, Kendall, Lawson, Lincoln, Lovell, Marshall, Meredith, Thomas L. Moore, O'Faherty, Pettit, Quarles, Smith, Stebbins, Stuart, Thom, Vincent, Waddill, Walker, Wescott, Wise, Woodhouse, and Yancey—42.

So the amendment was rejected.

Mr. CARTER: I move to reconsider the vote by which the amendment was rejected.

The motion was rejected.

Mr. JAMES W. GORDON: I offer the following as an amendment to Section 2:

The Secretary read as follows:

Amend Section 2 by adding thereto the words "nor in any property the conveyance of which by the homestead claimant has been set aside on the ground of fraud or want of consideration."

Mr. JAMES W. GORDON: Mr. President, the Convention has refused to amend these two sections in any particular, so far. They have retained the $2,000 exemption and have allowed it to be claimed just as it has been done heretofore. I ask that the Convention will now stamp with disapproval the practice which has been so common in this Commonwealth in the last few years of men making voluntary and fraudulent conveyances of their property and then coming in right behind the decree or judgment of a court and claiming that property as exempt—not only claiming it as exempt against their creditors, but claiming it as exempt against their grantees. I ask that the Convention will do this simple act of justice and not send this homestead exemption out through the Commonwealth and say "We will not only give you $2,000 of exemption, but we will place a premium upon the fraudulent conveyance of your property."

Mr. RICHMOND: I call for the pending question.

The pending question was ordered.

The PRESIDENT: The question is on agreeing to the amendment offered by the gentleman from Richmond (Mr. Gordon).

Mr. BRAXTON: I call for the yeas and nays.

The yeas and nays were ordered and being taken resulted yeas 30, nays 29, as follows:

Yeas: Messrs. Ayers, Barbour, Thomas H. Barnes, Braxton, Brown, Chapman, Earman, Fletcher, James W. Gordon, Gwyn, Hamilton, Hardy, Hatton, Claggett B. Jones, Lincoln, McIlwaine, Meredith, Moncure, Mundy, Orr, Pollard, Portlock, Robertson, Tarry, Thornton, Turnbull, Walter, Willis, Wysor, the President.—30.

Nays: Messrs. Allen, George K. Anderson, W. A. Anderson, Manly H. Barnes, C. J. Campbell, Carter, Cobb, Davis, Dunaway, Eggleston, Epes, Garnett, Gilmore, Green, Gregory, Hancock, Ingram, G. W. Jones, Lindsay, Miller, Parks, Pedigo, Phillips, Richmond, Rives, Summers, Waddill, Watson, Withers.—29.

Not voting—Messrs. Barham, Blair, Boaz, Bolen, Bouldin, Bristow, Brooke, Cameron, P. W. Compbell, Crismond, Daniel, Fairfax, Flood, Gillespie, Glass, B. T. Gordon, R. L. Gordon, Harrison, Hooker, Hubard, Hunton, Keezell, Kendall, Lawson, Lovell, Marshall, R. Walton Moore, Thomas L. Moore, O'Flaherty, Pettit, Quarles, Smith, Stebbins, Stuart, Thom, Vincent, Walker, Wescott, Wise, Woodhouse, and Yancey—41.

So the amendment was agreed to.

Mr. BARBOUR: I move to reconsider the vote by which the amendment was agreed to.

The motion was rejected.

The PRESIDENT: The question is on agreeing to the adoption of Section 2 as amended.

Section 2 as amended was adopted.

Mr. Green: I move to reconsider the vote by which Section 2 was adopted.

The motion was rejected.

The PRESIDENT: The Secretary will read Section 3.

The Secretary read as follows:

Sec. 3. The General Assembly shall prescribe in what manner and on what conditions the said householder or head of a family shall set apart and hold for himself and family a homestead out of any property hereby exempted, and may, in its discretion, determine in what manner and on what conditions he may hold, for the benefit of himself and family, such personal property as he may have coming within the exemption hereby made. But this section shall not be construed as authorizing the General Asembly to defeat or impair the benefits intended to be conferred by the provisions of this article.

The PRESIDENT: The question is on agreeing to the adoption of Section 3.

Section 3 was adopted.

Mr. RICHMOND: I move to reconsider the vote by which Section 3 was adopted.

The motion was rejected.

The PRESIDENT: The Secretary will read Section 4.

The Secretary read as follows:

Sec. 4. Nothing in this article contained shall be construed as invalidating any homestead exemption already claimed under the provisions of the former Constitntion, but the same shall be hereafter held and disposed of under the conditions and provisions of this article; and the provisions of this article shall be liberally construed.

The PRESIDENT: The question is on agreeing to the adoption of Section 4 as read.

Section 4 was adopted.

Mr. SUMMERS: I move to reconsider the vote by which Section 4 was adopted.

The motion was rejected.

The PRESIDENT: The Secretary will read Section 5.

The Secretary read as follows:

Sec. 5. The General Assembly is hereby prohibited from passing any law staying the collection of debts, commonly known as "stay laws;" but this section shall not be construed as prohibiting any legislation which the General Assembly may deem necessary to fully carry out the provisions of this article.

The PRESIDENT: The question is on agreeing to the adoption of Section 5 as read.

Section 5 was adopted.

Mr. RICHMOND: I move to reconsider the vote by which Section 5 was adopted.

The motion was rejected.

The PRESIDENT: The Secretary will read Section 6.

The Secretary read as follows:

HEIRS OF PROPERTY.

Sec. 6. The children of parents, one or both of whom were slaves at and during the period of co-habitation, and who were recognized by the father as his children, and whose mother was recognized by such father as his wife, and was co-habited with as such, shall be as capable of inheriting any estate whereof such father may have died seized or possessed as though they had been born in lawful wedlock.

Mr. GREEN: Before the vote is taken on Section 6, the word "of" in line 1 in the phrase "one of both of whom" should be "or" so that it will read "the children of parents, one or both of whom were slaves," etc.

The PRESIDENT: That correction will be made, without objection. The question is on agreeing to the adoption of Section 6.

Section 6 was adopted.

Mr. RICHMOND: I move to reconsider the vote by which Section 6 was adopted.

The motion was rejected.

The PRESIDENT: The Secretary will read the next article.

The Secretary read as follows:

ARTICLE ——.

SALE OF INTOXICATING LIQUORS.

Section 1. First. No intoxicating liquors shall be sold in this State without a license therefor first obtained.

Mr. BARBOUR: Mr. President, the Convention will observe that this first section is a part of a scheme the gist of which is in the second section. I, therefore, ask that the first section be passed temporarily so that we may take up the second section.

Mr. GREEN There is no objection to that on my part.

The PRESIDENT: It will be so ordered without objection.

Mr. SUMMERS: Mr. President, I have an amendment I wish to offer first. It will not interfere with that other matter.

Mr. BARBOUR: That will come up later.

Mr. SUMMERS: I do not know whether it can or not.

Mr. BARBOUR: Mr. President, as I understand, we have passed the first section.

The PRESIDENT: The Chair announces it would be passed without objection. Does the gentleman object?

Mr. SUMMERS: I do not want to be precluded from putting in my prohibition clause, but I do not object.

The PRESIDENT: The Secretary will read the second section.

The Secretary read as follows:

"Second. The Legislature shall have the full power of enacting local option or dispensary laws, or any other laws controlling, regulating, or prohibiting the manufacture or sale of intoxicating liquors."

Mr. BARBOUR: Mr. President, I move to substitute for this section as originally reported by the committee except the words "who actually voted in the last preceding regular election in such town or in such precinct", in lines 10 to 12. That will leave the section then in the exact condition in which it was amended by the Committee of the Whole, so that a majority of the petitioners for these licenses would have to be signed by the registered voters in the precinct and not confined to those who actually voted in the last preceding election.

Before the vote is taken on this section, Mr. President, I wish to call the attention of the Convention to the further fact that the committee have agreed upon a further section as Section 4, which directs that this article shall not go into effect until it has been submitted to a vote of the people separate from the vote on the main portion of the Constitution, so as to present this single question directly to the voters of those portions of the State which are affected by it. I make that statement so that there may be no misunderstanding on that score on the part of the members of the Convention.

The PRESIDENT: The Secretary will read the amendment proposed by the gentleman from Culpeper (Mr. Barbour).

The Secretary read as follows:

In lieu of the substitute adopted in the Committee of the Whole, insert the following language:

"No license to sell intoxicating liquors in quantities of less than one gallon or to be drunk at the place where sold shall be authorized or granted in any town or county of this State for a period of more than twelve months, nor without the written request of a majority in number of the legally qualified and registered voters resident in the town or in the precinct of the county wherein such liquors are intended to be sold."

The PRESIDENT: The question is on the amendment offered by the gentleman from Culpeper.

Mr. GREEN and Mr. BARBOUR: I call for the yeas and nays.

The yeas and nays were ordered and taken.

Mr. GARNETT: On this question I am paired with the gentleman from Madison (Mr. Lovell). If he were present he would vote nay and I should vote yea.

Mr. THORNTON: I am paired with the gentleman from Petersburg (Mr. Cameron.) If he were present he would vote nay and I should vote yea.

Mr. HAMILTON: I am paired with the gentleman from Greenesville (Mr. Vincent). If he were present he would vote yea and I should vote nay.

Mr. BARBOUR: Mr. President, in justice to the gentleman from Middlesex (Mr. Bristow) I desire to state that he thought he was paired with the gentleman from Orange (Mr. Walter). The gentleman from Orange thinks he is mistaken.

Mr. BROWN: Mr. President, I desire to announce that the gentleman from Accomac, (Mr. Wescott) is paired with the gentleman from Halifax (Mr. Stebbins). Mr. Wescott would vote nay and Mr. Stebbins would vote yea.

After the roll had been called and verified, Mr. Pollard said:

Mr. President, there seems to be a pretty general misapprehension of the proposition we are voting on.

The PRESIDENT: It was distinctly announced more than once, and the Secretary read it.

Mr. POLLARD: Still there seems to be quite a misapprehension, and I know the Convention does not want an expression of opinion thta is not a true expression by the members.

The PRESIDENT: The question was on the amendment offered by the gentleman from Culpeper (Mr. Barbour), which he read himself and which the Secretary read. What is the motion of the gentleman?

Mr. POLLARD: I do not make any motion. I simply say there is a misapprehension in reference to the vote, and for that reason I should like to have the vote retaken.

Mr. GREEN: Who has misapprehended it?

Mr. POLLARD: Half a dozen gentlemen around here have told me they did not understand it.

The PRESIDENT: The vote has been verified by the Secretary, and if any gentleman has been incorrectly recorded, he can make a correction.

The question having been taken by yeas and nays, the result was announced, yeas 24, nays 36, as follows:

Yeas: Messrs. Ayers, Barbour, Chapman, Cobb, Dunaway, Earman, Eggleston, Epes, Green, Gregory, Gwyn, Hardy, G. W. Jones, Lincoln, Lindsay, McIlwaine, Mundy, Orr, Pedigo, Richmond, Summers, Turnbull, Watson, the President.—24.

Nays: Messrs. Allen, George K. Anderson, W. A. Anderson, M. H. Barnes, Thomas H. Barnes, Braxton, Brown, Carter, Davis, Fairfax, Fletcher, Gilmore, Hancock, Harrison, Hatton, Ingram, Claggett B. Jones, Keezell, Meredith, Miller, Moncure, R. Walton Moore, Parks, Phillips, Pollard, Portlock, Rives, Robertson, Stuart, Tarry, Thom, Waddill, Walter, Willis, Withers, Wysor.—36.

Not voting: Messrs. Barham, Blair, Boaz, Bolen, Bouldin, Bristow, Brooke, Cameron, C. J. Campbell, P. W. Campbell, Crismond, Daniel, Flood, Garnett, Gillespie, Glass, B. T. Gordon, James W. Gordon, R. L. Gordon, Hamilton, Hooker, Hubard, Hunton, Kendall, Lawson, Lovell, Marshall, Thomas L. Moore, O'Flaherty, Pettit, Quarles, Smith, Stebbins, Thornton, Vincent, Walker, Wescott, Wise, Woodhouse, and Yancey—40.

So the amendment was rejected.

Mr. CARTER: I move to reconsider the vote by which the amendment was rejected.

The motion was rejected.

Mr. GREEN: I now move to strike out the whole article in reference to the sale of intoxicating liquors. That article, as it now stands, reads: "No intoxicating liquors shall be sold in this State without a license therefor first obtained."

The Legislature has already full power to enact laws of this kind. It would be an anomaly to put into the Constitution a section giving the Legislature the power to do a particular thing. If the Legislature needed that power the proper place to give the power to pass such laws would be in the Legislative section, where all of its other powers are conferred upon it. It has full power in this regard and does not need this Constitutional provision. I hope, therefore, the whole provision in regard to the sale of intoxicating liquors will be stricken out. That is my motion.

Mr. SUMMERS: I have two motions to make. One with regard to this first section and one with regard to the second. As regards this second section I am trying to save this country as far as I can, and in order to get the right start, I offer this:

"No intoxicating liquors shall be sold in this State except in sealed packages, nor drunk where sold."

Mr. HARRISON: I would like to understand that. I understood the gentleman to say that liquor should not be sold in this State except in sealed packages, and should not be drunk where sold. Does he mean it could not be drunk in this State?

Mr. SUMMERS: The meaning of my resolution is that for time and eternity we will forever close the saloons of this State, in order that you from the country, feeble and not self-willed men, shall not have the temptation of the saloons before you. That is the object of this. I want to have it sold in packages, and to provide that it shall not be drunk where the packages are sold.

The PRESIDENT: The question is on agreeing to the amendment of the gentleman from Washington.

Mr. DUNAWAY: I desire to offer a substitute to the amendment offered by the gentleman from Washington (Mr. Summers). It is not that I am so much opposed to that, Mr. Chairman, but I do not believe that it can possible be adopted by this Convention. I offer one that I think will stand a better chance of being adopted, although I have not very much hope for it. I ask the attention of the members of the Convention while I read it: "The General Assembly shall, in the year 1905 submit to the qualified voters of the State the question, 'Shall intoxicating liquors be sold in the State to be drunk where sold?' If a majority of the voters in such election shall be cast in the negative, then no bar-room license shall thereafter be granted in the State."

Upon that substitute I wish to make a few explanatory remarks. I do feel, Mr. President, that this Convention owes something, that it owes a great deal to the people of the State who have multiplied their petitions to this Convention for some relief in regard to this matter. The original proposition has been voted down and about that I do not wish to say anything. I would not revive that question. The question raised here is shall the people of the Commonwealth have an opportunity to declare their will upon this question? It is not whether we will declare the will of the State in its organic law, but whether we will give the people of the State the opportunity of voting on this question. If this question to be submitted to the people should be voted on in the negative it will not at all interfere with the manufacture of intoxicating liquors in this State. It will not interfere with the sale of intoxicating liquors in the State in a retail or wholesale way, but if the majority of the voters shall vote no upon this proposition, then it simply breaks up the bar-rooms. It is simply a question as to whether intoxicating liquors shall be drunk at the place where sold, and that is all. I think we ought to give the people the right to vote on this subject for themselves. If at such an election the majority of the people shall say they are in favor of the bar-rooms then the will of the people must prevail. On the other hand, if the majority of the people of the Commonwealth want to abolish bar-rooms then they have a right to do so. A sufficient time is given between the present and the year 1905 for canvassing the State, for information to be given to the people by the press and by addresses before them. Nobody will be taken by surprise.

I hope it will be the pleasure of the Convention to put this into the Constitution as a concession to the petitions that have been presented here. It seems to me to be a moderate request to make the members of the Convention, and I ask them to support this resolution.

Mr. HATTON: I move the pending question.

The pending question was ordered.

The PRESIDENT: The question is upon agreeing to the amendment of the gentleman from Lancaster.

Mr. SUMMERS: I call for the yeas and nays.

The yeas and nays were ordered and taken.

Mr. GARNETT: I am paired with the gentleman from Madison (Mr. Lovell). If he were present he would vote nay and I should vote yea.

The question having been taken by yeas and nays, the result was announced yeas 32, nays 31, as follows:

Yeas—Messrs. George K. Anderson, Ayers, Barbour, Manly H. Barnes, Chapman, Cobb, Dunaway, Earman, Eggleston, Epes, Fletcher, James W. Gordon, Green, Gregory, Gwyn, Hardy, Claggett B. Jones, G. W. Jones, Lincoln, McIlwaine, Moncure, Mundy, Orr, Pedigo, Phillips, Pollard, Richmond, Summers, Turnbull, Waddill, Watson, and the President—32.

Nays—Messrs. Allen, W. A. Anderson, Thomas H. Barnes, Boaz, Braxton, Brown, Carter, Davis, Fairfax, Gilmore, Hamilton, Hancock, Harrison, Hatton, Ingram, Lindsay, Meredith, Miller, R. Walton Moore, Parks, Portlock, Rives, Robertson, Stuart, Tarry, Thom, Thornton, Walter, Willis, Withers, and Wysor—31.

Not Voting—Messrs. Barham, Blair, Bolen, Bouldin, Bristow, Brooke, Cameron, Clarence J. Campbell, P. W. Campbell, Crismond, Daniel, Flood, Garnett, Gillespie, Glass, B. T. Gordon, R. L. Gordon, Hooker, Hubard, Hunton, Keezell, Kendall, Lawson, Lovell, Marshall, Thomas L. Moore, O'Flaherty, Pettit, Quarles, Smith, Stebbins, Vincent, Walker, Wescott, Wise, Woodhouse, and Yancey—37.

So the amendment was agreed to.

The PRESIDENT: The question recurs upon agreeing to the section as amended.

Mr. BRAXTON: Mr. President, I rise to a parliamentary inquiry. I thought the motion just adopted was the adoption of a substitute and not an amendment.

The PRESIDENT: It was an amendment in the nature of a substitute. The Chair states that the question now is on the adoption of the section as amended.

Mr. DUNAWAY: Which section?

The PRESIDENT: Section 1.

Mr. DUNAWAY: I offered it as a substitute for the amendment of the gentleman from Washington (Mr. Summers).

The PRESIDENT: It was a substitute, but it is an amendment in the nature of a substitute. Strictly speaking, according to parliamentary law, there is no such thing as a substitute. This is an amendment in the nature of a substitute. That having been adopted the question recurs on the adoption of the original proposition as amended by the adoption of your resolution.

Mr. DUNAWAY: Then the section, as amended, is simply the section that has just been adopted?

The PRESIDENT: That is all; but as a matter of usage it must be put in this form.

Mr. HATTON: I desire to ask whether or not a motion to strike out the section has not been made by the gentleman from Danville (Mr. Green), the chairman of the committee?

The PRESIDENT: The gentleman is correct, but the Convention has a right to perfect the article before the motion to strike out is considered.

Mr. HATTON: I understood the President to state that the question is upon the adoption of the section as a whole.

The PRESIDENT: No, sir. The Chair stated that the question was upon the adoption of the section as amended. Then the motion to strike out will be in order. The question now is on agreeing to the resolution as amended.

Mr. HATTON: I call for the yeas and nays.

Mr TURNBULL: I would like to have the section reported as amended.

Mr. THOMAS H. BARNES: Mr. President, I move the Chair be vacated until 4 o'clock.

The motion was agreed to and at 1 o'clock and 55 minutes the Convention took a recess until 4 o'clock P. M.

AFTER RECESS.

At the expiration of the recess the Convention reassembled.

The PRESIDENT: The question now pending is on agreeing to the amendment in the nature of a substitute, offered by the gentleman from Lancaster to the original amendment offered by the gentleman from Washington.

Mr. THOM: Mr. President, as I understand it, it was amended by the gentleman from Lancaster and the question is whether we will adopt the section as thus amended.

The PRESIDENT: Yes, sir.

Mr. THOM: I call for the yeas and nays.

The yeas and nays were ordered and taken.

The following pairs were announced:

Mr. Lincoln with Mr. Tarry; Mr. McIlwaine with Mr. R. L Gordon; Mr. Green with Mr. Hunton; Mr. Gregory with Mr. Parks; Mr. Epes with Mr. Keezell; Mr. Manly H. Barnes with Mr. Thornton; Mr. Garnett with Mr. Cameron; Mr Claggett B. Jones with Mr. Kendall; Mr. Cobb with Mr. Brooke.

The first named in each instance would have voted in the affirmative.

The question having been taken by yeas and nays, the result was announced, yeas, 18; nays, 33, as follows:

Yeas—Messrs. George K. Anderson, Dunaway, Earman, James W. Gordon, Gwyn, Hardy, G. W. Jones, Moncure, Mundy, Orr, Pedigo, Phillips, Pollard, Richmond, Summers, Turnbull, Waddill, and the President—18.

Nays—Messrs. Allen, W. A. Anderson, Ayers, Barbour, Thomas H. Barnes, Boaz, Braxton, Brown, Clarence J. Campbell, Carter, Davis, Fairfax, Fletcher, Gilmore, Hamilton, Hancock, Harrison, Hatton, Ingram, Lindsay, Meredith, Miller, R. Walton Moore, Portlock, Rives, Robertson, Stuart, Thom, Walter, Watson, Willis, Wise, and Withers—33.

Not Voting—Messrs. Barham, Manly H. Barnes, Blair, Bolen, Bouldin, Bristow, Brooke, Cameron, P. W. Campbell, Chapman, Cobb, Crismond, Daniel, Eggleston, Epes, Flood, Garnett, Gillespie, Glass, B. T. Gordon, R. L. Gordon, Green, Gregory, Hooker, Hubard, Hunton, Claggett B. Jones, Keezell, Kendall, Lawson, Lincoln, Lovell, Marshall, McIlwaine, Thomas L. Moore, O'Flaherty, Parks, Pettit, Quarles, Smith, Stebbins, Tarry, Thornton, Vincent, Walker, Wescott, Woodhouse, Wysor and Yancey—49.

So the amendment to the amendment was rejected.

Mr. GREEN: Mr. President, I now propose to strike out the entire article.

Mr. SUMMERS: I have an amendment I want to offer.

The PRESIDENT: The Secretary will read the amendment.

The Secretary read as follows:

Insert at the end of the section these words:

"No intoxicating liquors shall be sold in the State except in sealed packages, nor be drunk when sold."

Mr. BARBOUR: I rise to a question of personal privilege. I merely wish to explain why I voted against the adoption of this section, after having voted to amend it. After mature consideration I have come to the conclusion that it is wrong and that our action in adopting this amendment this morning was wrong. I have come to the conclusion that it is contrary to the principle of local self-government in this matter, which I think is the proper rule for the settlement of this question.

Mr. WATSON: Mr. President, I will ask the indulgence of the Convention for a moment. I find myself in the same attitude as that occupied by the gentleman from Culpeper (Mr. Barbour). In the first instance I voted to incorporate the amendment offered by the gentleman from Lancaster (Mr. Dunaway) as a part of the Constitution. Upon reflection I became satisfied that it would destroy the right of each community to regulate its own affairs and that such a constitutional provision would be more unwise than the local option laws now prevailing.

The PRESIDENT: The question is on agreeing to the amendment offered by the gentleman from Washington.

The amendment was rejected.

Mr. QUARLES: I wish to move that section 1 be stricken out. I think it is somewhat in conflict with section 2.

Mr. GREEN: Mr. President, is not my motion to strike out the whole article now in order?

Mr. QUARLES: I think the motion I have just made takes precedence over the motion of the Chairman.

The PRESIDENT: The Chair thinks the gentleman from Augusta is in order and that he has the right to move to strike out Section 1.

The question is on agreeing to the motion of the gentleman from Augusta to strike out Section 1.

Mr. SUMMERS: Mr. President, I desire to offer a substitute for that. I offer this resolution, which amounts to prohibition. I thank God that I come from a country where men vote as they pray.

Mr. GREEN: P—r—e—y.

Mr. SUMMERS: No; P—r—a—y.

The PRESIDENT: The Secretary will report the amendment.

The Secretary read as follows:

"No intoxicating liquors shall be sold in this State."

The PRESIDENT: The Chair thinks that motion is not in order. The gentleman from Augusta has moved to strike out the first section. It is not in order, while that motion is pending, to move to insert other words.

Mr. QUARLES: Section 1 provides that no intoxicating liquor shall be sold in this State without a license is first obtained. Section 2 provides that the Legislature may enact any dispensary laws. I think Section 1 would therefore conflict with Section 2 because a dispensary law authorizes the sale of liquor without a license and for this reason I move that Section 1 be stricken out.

Mr. GREEN: Mr. President, I would like to offer as a substitute for that, that the whole article be stricken out.

Mr. QUARLES: The motion to strike out the entire article, would necessarily, it seems to me, be preceded by the motion I make to strike out Section 1.

The PRESIDENT: The Chair thinks the gentleman is correct. The question will be on the motion to strike out Section 1.

Mr. AYERS: In the event that the motion should not prevail I move to amend by striking out the words "Legislature" and inserting the words "General Assembly."

The PRESIDENT: The question is on the motion of the gentleman from Augusta to strike out Section 1.

The motion was agreed to.

Mr. GREEN: Mr. President, I now move to strike out the entire article.

The PRESIDENT: The question is upon the motion of the gentleman from Danville to strike out the entire article.

The motion was agreed to.

Mr. GREEN: I now move to reconsider the vote by which the entire article was stricken out.

Mr. QUARLES: Mr. President, I hope the motion made by the gentleman from Danville will carry, and that the vote will be reconsidered. Section 1, which is proposed to be stricken out, was proposed by myself. The reason I proposed it, was that I knew the constitutionality of a dispensary law had been questioned, and inasmuch as this Convention has taken the position that the Legislature ought to have full control of this matter, I thought all doubt should be removed as to whether or not the Legislature has the power to pass a dispensary law or any other law regulting to the sale of liquor.

Mr. R. WALTON MOORE: May I interrupt the gentleman?

Mr. QUARLES: Yes, sir.

Mr. R. WALTON MOORE: This morning I inquired of some of the members of the committee, including the chairman, if any question seemed to exist as to the power of the General Assembly to enact a dispensary system, unless authorized by the Constitution. They answered in the negative. My friend says some question has arisen. Will he go a little more into detail, and tell us how the question has arisen, and when, because if it be necessary, in order to bring about the dispensary system in the future if it becomes desirable to bring it about, to put anything in the Constitution I would vote to retain this provision.

Mr. QUARLES: I do not desire at this time to enter into a discussion of the legal aspect of this matter. I remember having seen in the press some time ago that there was a case pending before one of the circuit courts of this State in which the constitutionality of such a law was involved. My impression is that the court held it unconstitutional. I know further that when bills controlling the sale of liquor have heretofore been offered in the Legislature they have been opposed on the ground that they were unconstitutional and I wish to remove all questions about the matter. And I think it fair to the temperance people that this be done—

Mr. CARTER: Will the gentleman yield for a question?

Mr. QUARLES: I want to take away all doubt that might possibly arise about the power of the Legislature in enacting laws in regard to the sale of whiskyy—

WILL BE CONCLUDED TO-MORROW.