# Proceedings of the Constitutional Convention

## OFFCIAL REPORT.

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ppi into the Constitution it is bound by the language because it is there in the Constitution. There is no construction about it.

I submit we are only asking this Convention to stand by what it has previously done, and put this just provision in the Constitution. I say the language offered by the gentleman from Staunton (Mr. Braxton) means that knowledge of defective machinery shall be no defence at all. That is what it says. The Mississippi court has put a different construction upon it, but we cannot say that our court will put that same construction upon it.

Mr. GEORGE K. ANDERSON: Will the gentleman permit me to interrupt him?

Mr. WYSOR: Yes, sir.

Mr. GEORGE K. ANDERSON: Do you think the Supreme Court of Virginia would put any other construction upon it when the Convention that makes the law has put that construction upon it?

Mr. WYSOR: I think that when I am going to make a provision to go into the Constitution, I am going to know what it means. I am not willing to put a provision in the Constitution that needs construction.

Mr. GEORGE K. ANDERSON: I wish to ask my friend whether the Supreme Court will not be called upon to construe the language he proposes to put in, "a bar."

Mr. WYSOR: No, sir; I think not.

Mr. GEORGE K. ANDERSON: Will you tell this Convention what that word means?

Mr. WYSOR: The provision means exactly what it says. I have argued that here at length, that it shall not of itself be a bar, but taken in connection with other facts and circumstances, might bar recovery. That is what it means.

Mr. GEORGE K. ANDERSON: Why do you not put it in in that way?

Mr. WYSOR: There is no necessity to do it. We take it from the decision of the Mississippi court construing the language which you want to put in here. In other words, you put doubtful language in the Constitution. You admit what that language means, and we take the meaning and put it in the Constitution instead of the language itself.

Mr. GEORGE K. ANDERSON: You do not take all of it.

Mr. WYSOR: That is exactly what we are doing. You want to put doubtful language in. You say a court has construed it and construed it properly. Then we take the language of the court instead of the doubtful language of the Mississippi Constitution, which had to be construed before its meaning was ascertained.

Now, gentlemen, are you going to do what you have already done? That is what I want to know. Are you going back on the Committee on Corporations and on the Committee of the Whole? My amendment simply restores to the original report, which the Committee on Corporations adopted, and which the Committee of the Whole adopted, and which the chairman supported. I know his views have been in favor of it. Are we to follow the chairman? He is a good leader, but when a man goes one way and then wheels around the other way, and then back again, how are you going to keep up with him? I cannot keep up with him. I submit we ought to sustain the original report which is in effect the amendment I have offered. I think we ought also to put that second amendment in I have offered, that the doctrine of contributory negligence shall not be impaired. They admit it does not destroy contributory negligence. Well, why do they not say it in so many words? They do not give you any reason for not saying it. They simply get up and argue that this provision does not effect the question of contributory negligence. If it does not, then I submit to the Convention that it does no harm to say that it shall not impair that doctrine and leave no doubt or question whatever upon that subject.

Before I close I want to say that I am as much in favor of getting a good article for the employees as anybody. This, as is well known, has been my position all the time. We have a good article and the Legislature can enlarge it if it sees proper, but I do not intend to go too far with the matter. I think other gentlemen are as patriotic and just as I am, but I know that sometimes when men get started against corporations they will go just as far as possible. They have seen that the temper of this body was to support this report from beginning to end. Seeing how strong the sentiment was in favor of it, they thought they might get a more drastic provision on this question of knowledge of defective machinery. The chairman, flushed with previous victories, which his committee aided in achieving, thinks he can carry anything before the body, and these gentlemen who are supporting him, believe the same, with their aid and help.

I submit they ought to be turned down a little, and it will be good for them.

Mr. MEREDITH: Then you would be flushed with another victory.

Mr. WYSOR: No, sir; not at all. I would simply have the victory which we originally won in the Committee of the Whole, and which you helped us to win.

I thank the Convention for its attention.

Mr. THORNTON: I call for the pending question.

The pending question was ordered.

Mr. BRAXTON: Mr. President, I must protest against that. Three speeches have been made against the proposed substitute, and I am not allowed to reply.

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

Mr. THORNTON: I withdraw the motion.

The PRESIDENT: It will be necessary for the Convention to reconsider, as the pending question has been ordered.

Mr. THORNTON: Then I move to reconsider the vote by which the pending question was ordered.

The motion to reconsider was agreed to.

Mr. WITHERS: Will the gentleman from Augusta yield for a moment?

Mr. BRAXTON: Yes, sir.

Mr. WITHERS: I promise not to bore you any more than two or three minutes. But I do want to speak for half a second, if I may describe a speech in that way, to the members of this body who are not lawyers.

We have heard a great deal about assumed risks, and contributory negligence and a defense to an action. I want to submit to you gentlemen who are not lawyers, that the utmost that this language can mean is this: If I am employed in the running of a railroad train, or in its physical construction, and I go to my employer and say "Mr. Blank, this brake is out of fix," and Mr. Blank tells me, "You go ahead and work on it; we will fix it," and he does not fix it, my knowledge of that brake being out of fix shall not prevent my recovering for an injury against that railroad company if, after I have such knowledge, I use a proportionate care that keeps up with the rate of knowledge that I have; and that is common justice and common equity.

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

Mr. WITHERS: Yes, sir.

Mr. CARTER: Has not that always been the law?

Mr. WITHERS: No, sir; it is not the law in Virginia to-day, and nowhere near the law. The case of Green wiped out any questions of anything of that sort. There was never anything like that in the law since the present courts have been in existence.

I say, therefore, to you gentlemen who are not lawyers, all this talk about assumed risk and contributory negligence is in regard to fine legal distinctions. We are considering giving justice to people who have not had it in this Commonwealth for many a long day; to the man who is turned loose upon the carelessness of any incomeptent employee to lose his life or his limb and to be maimed forever, if not killed; and we want to provide that whenever a man has knowledge of a defective machine or instrument with which he has to work, that knowledge shall not be a defense, provided that after he got that knowledge he used due and proper care, with the knowledge of the defect before him; but if, on the other hand, he does not use such care as that knowledge should make him use, then he is guilty of contributory negligence, and the corporation has its full defense.

Now, carried out to its farthest extent, that is all these words may mean, by the farthest possible construction the court may give them, and our court has not seen fit to construe other than strictly the remedies afforded an employee.

One other point and I shall sit down. They say "If you mean this, why do you not say it"? Simply because when a clause in a bill or an act or a Constitutional ordinance has been construed, the proper thing in order to get that same construction is to copy the language of that clause, and not to copy the language of the opinion construing it. A change in language means a change in construction. An addition that this shall not be so and so will give the Court of Appeals the opportunity, should it be hostile to the measure, and I do not say it will, to confound and confuse and obliterate the difference between an assumed risk and contributory negligence, and practically nullify this knowledge clause of this provision.

Every party in the State of Virginia has demanded that these people should have relief. This Convention is practically unanimous, by three or four to one, that they should have a reasonable relief, and I submit to the Convention that because of the fact that this fight was not brought up in Committee of the Whole, it should not emasculate the protective provision of this measure by making it what it now is, not a bar to bringing an action—everybody knows we can bring it and the court says we can gring it—but when we get in the court its opinions practically preclude us from establishing a case under any declaration we can draw whereby the man can recover, if he has knowledge, no matter how careful he has been, even if his case was more than proportioned to his knowledge of the defect.

Mr. BRAXTON: Mr. President, I thank the Convention for indulging me to close this debate, and I will try and be as short as possible.

The principal argument that seems to have been brought to bear upon this question, is that we are inconsistent. Consistency is a very good thing; but a man had better be right than be consistent. If we can improve this language; if we can put it in such form that it is beyond all doubt, it is the safest thing to do. I have tried to deal with great frankness in this matter. I have said to this Convention that if I had to draw this without any guide I would not use the language now used in the substitute. I am free to say that, as an original proposition, I would prefer the language used in the amendment offered by my friend from Pulaski (Mr. Wysor). But there is this difficulty. That language has never yet been construed. In place of it the substitute now offers language which has been construed. In construing that language, the court has said it means, identically and exactly, the very thing we want it to mean, without a shade or shadow too much or too little. Now, sir, we might exhaust ourselves for the balance of our lives in seeking for other language, and we could not find any that would mean any nearer the exact thing that we want it to mean than the Court of Mississippi says this does. I think everybody here agrees with me in that. I do not believe there is a man within the sound of my voice, who wants an employers' liability bill, that does not want it to mean the very thing that the Mississippi Court says it means. The only objection to the use of this language is that gentlemen say, if they had to construe it they might say it meant something different from what the Mississippi Court says it means, and that they have no assurance that our courts will construe it as the Mississippi court did. In reply to that, gentlemen of the Convention, I submit to you that it is a canon of construction that has been recognized so long tthere is no doubt about it that a court of Virginia in construing this language, will give it the construction that the court of Mississippi gave it, whether that is the construction that they, themselves, would have given it had the question arisen as res integra. My friend from Norfolk cites you a case in Kentucky in which that rule seems to be departed from. I want to cite you a case in Virginia decided by the present court, within the last twelve months, in which it is laid down as the law of Virginia to-day, that when we adopt an enactment from another S we adopt it with the construction that State has put upon it. I refer to the case of Norfolk and Western Railroad Company against the Old Dominion Baggage Transfer Company, decided by our present court in January, 1901. The question was as to how far our court is bound by the construction put upon enactments taken from other States. It was contended that the language did not mean what the opposite side contended it did mean. The opposite side says: "It don't make any difference what you say about it, it is taken from the statutes and enactments of another country and it means what that country has said it means." Now let us see whether our court recognizes that principle as the law of this State. The court said:

"This law was originally passed by the Legislature in 1867 and has been centinually in force until the present time. It was taken from and is in the words of Section 2 of the English Railway and Canal Traffic Act, 1874. The Legislature having taken from the English Act the language used in Section 3, of the act approved March 3, 1892, adopted therewith the construction placed upon that language by the English courts.

"In Doswell vs. Buchanan, 3rd Leigh, Carr J. said: 'It is admitted that when the construction of an English statute has been settled by a series of decisions and our Legislature enacts that statute in totidem verbis, the construction must be considered as adopted along with the statute.' In Danville vs. Page, 25 Gratt., Judge Staples said: 'It is not to be supposed that the Legislature incorporated into our laws an important statute of another State in ignorance of the interpretation given to it by the courts of that State. It must be presumed, rather, that the Legislature in adopting the precise phraseology, intended to adopt along with it the interpretation also.'

"In Magnus vs. McClelland, 93rd Virginia, 786, Judge Keith said: 'It is a familiar rule of contruction that when a statute has been construed by the court and is then re-enacted by the Legislature, the construction given to it is presumed to be sanctioned by the Legislature and thenceforth becomes obligatory upon the court. This rule of construction has been applied by the Supreme Court to the same section of the English traffic act now under consideration, from which was also taken the third section of the Interstate Commerce Act.'

"In I. C. C. vs. B. & O. R. R. Co., 145th United States, 263, Justice Brown said, 'but so far as relates to the question of undue preference, it may be presumed that Congress, in adopting the language of the English acts had in mind the construction given these words by the English courts and intended to incorporate them into the statute.'"

And finally, our own court about twelve months ago, in the case of the Norfolk and Western Railway Company vs. The Baggage Transfer Company, said: "In view of this settled rule of construction we must look to the interpretation that has been put upon the English act by the English court, at the time of its adoption by the Legislature in 1867 and be guided by those decisions in interpreting the legislation in question."

"Inasmuch as the construction put upon the statute in question by the English court prior to our adoption of it is conclusive of the case at bar, we have deemed it unnecessary to cite numerous decisions of the American courts placing the same construction upon statutes similar to our own."

Now, Mr. President and gentlemen of the Convention, can there be the least lingering shadow of a doubt that when we adopt this provision of the Mississippi Constitution we take with it the construction which the Mississippi court puts upon it? I say there cannot be the slightest possibility of the court giving it any other than the identical construcion that was put upon it in the State from which it was taken.

What is that construction? It is identically and exactly the thing that all of us admit we want to put here. If it had not been construed I tell you frankly I would have preferred the language of the gentleman from Pulaski. But that language, however I may personally like it, remains to be construed. This language has been construed and is ready to hand. Why do we not use the construction of the court? Because it would take a page or two, and we cannot insert pages here. By taking a page or two out of the opinion of the court and inserting that, rather than the section which the court undertook to construe, we are not adopting the language the court construed, but we are adopting, as my friend says, unconstrued language, and we leave it to this court to say whether they will construe it to mean the very thing we want it to mean or something else. Having a certainty shall we take an uncertainty?

Now, gentlemen of the Convention, this is the last thing to be concidered in this report. All of us, I believe, with practical unanimity, want an employers' liability bill. We want an employers' liability bill that will do the thing it purports to do. We want one that has no holes or leaks in it. We want to get onue from which will be removed, as far as possible, the danger and the possibility of unfavorable construction. I hope I do not press my views offensively upon you, but I ask you, if you wish to accomplish this purpose and do it in the best and wisest way, if it is not the safest thing to use language which the courts have already said means identically the thing that you admit you want, rather than to go off into the field of untried experiment, which we are bound to do sometimes, but which we need not do in this case. The doubt as to whether the courts of this State will adopt the decision of the court of Mississippi I think is set absoultely at rest by the decision in the case I have just read.

I trust, therefore, gentlemen, that in order to assure ourselves of accomplishing what we want to accomplish, we should go along the beaten path which we know will lead us there, and not venture on any road in the hope that it may be a better road but which possibly may not take us there at all.

I thank the Convention for its indulgence.

Mr. WESCOTT: I move the pending question.

The pending question was ordered.

The PRESIDENT: The question is upon the first proposition of the amendment offered by the gentleman from Pulaski.

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

The yeas and nays were ordered and taken.

The following pair was announced:

Mr. R. Walton Moore with Mr. Walker.

The first named would have voted in the affirmative.

The question having been taken by yeas and nays, the result was announced, yeas, 26; nays, 39, as follows:

Yeas—Messrs. Ayers, Thomas H. Barnes, Bolen, Bouldin, Brooke, Cameron, Carter, Chapman, Earman, Gregory, Hamilton, Harrison, Hatton, Kendall, Lincoln, Lovell, Mundy, Richmond, Robertson, Thom, Thornton, Waddill, Willis, Woodhouse, Wysor, and Yancey—26.

Nays—Messrs. Allen, George K. Anderson, W. A. Anderson, Barbour, Blair, Braxton, Brown, Epes, Fairfax, Fletcher, Flood, Garnett, Gilmore, James W. Gordon, R. L. Gordon, Green, Gwyn, Hancock, Hardy, Hooker, G. W. Jones, Lindsay, McIlwaine, Meredith, Miller, Moncure, O'Flaherty, Parks, Phillips, Pollard, Quarles, Rives, Stebbins, Stuart, Summers, Tarry, Wescott, Withers, and the President—39.

Not Voting—Messrs. Barham, Manly H. Barnes, Boaz, Bristow, C. J. Campbell, P. W. Campbell, Cobb, Crismond, Daniel, Davis, Dunaway, Eggleston, Gillespie, Glass, B. T. Gordon, Hubard, Hunton, Ingram, Claggett B. Jones, Keezell, Kendall, Lawson, Marshall, R. Walton Moore, Thomas L. Moore, Orr, Pedigo, Pettit, Portlock, Smith, Turnbull, Vincent, Walker, Walter, Watson, and Wise—35.

So the first proposition of the amendment was rejected.

The PRESIDENT: The question recurs on the adoption of the second proposition of the amendment proposed by the gentleman from Pulaski.

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

The yeas and nays were ordered, and being taken, resulted, yeas, 19; nays, 42, as follows:

Yeas—Messrs. Ayers, Thomas H. Barnes, Bolen, Bouldin, Brooke, Cameron, Carter, Earman, Gregory, Hamilton, Hatton, Lincoln, Mundy, Richmond, Robertson, Thom, Willis, Wysor, and Yancey—19.

Nays—Messrs. Allen, George K. Anderson, W. A. Anderson, Barbour, Braxton, Brown, Chapman, Epes, Fairfax, Fletcher, Flood, Garnett, Gilmore, James W. Gordon, R. L. Gordon, Green, Gwyn, Hancock, Hardy, Harrison, G. W. Jones, Lindsay, Lovell, McIlwaine, Meredith, Miller, Moncure, O'Flaherty, Parks, Pedigo, Phillips, Pollard, Quarles, Rives, Stebbins, Stuart, Summers, Thornton, Waddill, Wescott, Withers, and the President—42.

Not Voting—Messrs. Barham, Manly H. Barnes, Blair, Boaz, Bristow, C. J. Campbell, P. W. Campbell, Cobb, Crismond, Daniel, Davis, Dunaway, Eggleston, Gillespie, Glass, B. T. Gordon, Hooker, Hubard, Hunton, Ingram, Claggett B. Jones, Keezell, Kendall, Lawson, Marshall, R. Walton Moore, Thomas L. Moore, Orr, Pettit, Portlock, Smith, Tarry, Turnbull, Vincent, Walker, Walter, Watson, Wise, and Woodhouse—39.

So the amendment was rejected.

Mr. ROBERTSON: Mr. President, I desire to offer an amendment to this section by providing that the language of this section shall be construed in the same manner that similar language was construed in the case of Buckner against the Richmond and Danville Railroad Co. et al, reported in 72d Mississippi, page 783.

The PRESIDENT: The gentleman will reduce his amendment to writing and the Secretary will read the amendment.

Mr. BARBOUR: I hope the rule will be waived and that we may be permitted to vote on this amendment, without reducing it to writing.

The PRESIDENT: That will be taken as the sense of the Convention unless there is objection.

Mr. WYSOR: I object.

The PRESIDENT: Objection is made by the gentleman from Pulaski.

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

Mr. ROBERTSON: Mr. President, if the Convention will permit me I will read this amendment and I would be very glad if the gentlemen would listen to me. I am not offering this amendment simply as a criticism on the action of the Convention and I think I am entitled to be heard. This is a very serious question and it does seem to me that it ought to be given some consideration.

The amendment which I offer is to come in after the word "thereby," in the following sentence: "knowledge by any such employee of the defective or unsafe character or condition of any machinery, ways, appliances or structure, shall not of itself be a bar to recovery for an injury caused thereby."

To that I add "provided, however, that the language here employed shall be given the interpretation put upon it by the Supreme Court of Mississippi in the case of Buckner vs. Richmond and Danville Railroad Company et al, reported in 72d Mississippi Reports, page 783.

Mr. THOM: Will the gentleman permit me to interrupt him?

Mr. ROBERTSON: Certainly sir.

Mr. THOM: What does my friend think would be the effect of the rejection of that amendment by this Convention? Of course it is understood by all of us that we hope the court will follow that decision. Suppose the Convention rejects the proposition that it must follow it. Would it not be a dangerous thing for us to put the matter in such a position as that?

Mr. ROBERTSON: No, sir; I don't think so. Gentlemen have argued here that the Court of Appeals will necessarily follow the decision of the Supreme Court of Mississippi in regard to this matter. I cannot agree with the gentleman about that. I am perfectly willing to agree that courts do, ordinarily, put upon a statute taken from another State the construction that the courts of that other State have put upon it. I think, however, that there is some qualification to that rule. It must be a long continued construction which is well known and observed by the courts of the State from which that statute is taken, or that provision of the Constitution is taken. The Constitution of Mississippi was only adopted in 1890. The decision that these gentlemen rely upon as showing what our courts would say about this matter was made in the year 1895. Every lawyer in this body knows I am right when I say there is no principle which binds the Supreme Court of Mississippi to adhere to that construction of the language in the case cited here in argument. That case is a precedent, and the court will, in all probability follow it; but every member of the bar that has any experience knows that courts reverse their own decisions and adopt different views as to the construction of language. The courts have decided again and again that if, upon review of a matter that has already been decided, they are of the opinion that the former decision was clearly wrong, in the face of the principle of stare decisis they reverse the right to take a different view of the matter. This Convention has refused to use plain language about which there can be no doubt in this provision. There is no dispute amongst us as to what we want here. I do not think there is any man in this Convention who is opposed to giving to the railroad employees the relief this article calls for. I, for one, certainly am not opposed to it. I have stated, time and time again, that I am opposed to putting these things into the Constitution because I do not believe it is in the interest of the employees of the railroad companies any more than it is to the interest of the railroad companies to put into our permanent law, that which, in its nature, is a legislative enactment. But the majority of this Convention has decided otherwise, and, we are agreed upon that point. The simple question here is what language we shall use. These gentlemen say we ought to use the language that the Mississippi Constitution contains because there is a decision of the court in Mississippi which gives it the construction we desire. Now, if they want the construction put upon it that the Mississippi court has put upon it, if they are unwilling to take the language that gentlemen have suggested here, which is a paraphrase of the language of the Mississippi courts, then I can see no reason on earth why they should be unwilling to put in a provision stating what kind of construction they want our Court of Appeals to put upon this language. My friend from Norfolk (Mr. Thom) has suggested to me a difficulty about the matter. I do not understand that the Court of Appeals is going to look at what we say here, or how we vote here, in order to construe this law. I hope it is not. I hope the Court of Appeals is not going to read our debates in this Convention in order to determine anything on the face of God's earth. I think that would be abandoning every canon of construction. The language used by us is what the Court of Appeals is going to go by, and not by what the gentleman from Augusta or the gentleman from Richmond or the gentleman from anywhere else says the language means.

Mr. MEREDITH: May I ask the gentleman a question?

Mr. ROBERTSON: Certainly, sir.

Mr. MEREDITH: Would you not be ashamed to see that language in the Constitution of the State of Virginia?

Mr. ROBERTSON: No, sir; I would not. I would prefer to have it there. My idea, and yours, as to what is shameful may be different.

Mr. MEREDITH: Decidedly.

Mr. ROBERTSON: You have voted to put language in this provision that is admittedly capable of two constructions. You say you put it there because the Mississippi court has construed it in a certain way, and in the way that you want it to be construed. Now, if you are sincere in that, what objection can there be to saying that our court shall construe it in the same way that the Mississippi court did?

Mr. BRAXTON: Mr. President, with the consent of my friend from Roanoke I would like to ask that the sesion be extended for fifteen minutes. We are practically at the end of this report and I am very anxious to get through this morning. My physical condition is such that I do not think I will be able to get back this evening and, if it is possible to do so, I would like to get through at the morning session.

The PRESIDENT: Unless there is objection, that will be taken as the sense of the Convention.

Mr. ROBERTSON: I do not want to say anything more about this matter. I have offered it in good faith, because it does seem to me that we ought to use language in this Constitution that means what we say we want it to mean. If the gentleman wants to invoke the construction of a foreign court in a foreign State and put language here that has been construed, in a limited sense, by that State, let them put it here so as to remove all doubt. If they are acting in good faith; if they have not been expecting to get more out of this language than the Mississippi courts give them, what reason can they have for not voting that the Mississippi construction shall be put into it? Gentlemen have said something here about this matter not having been voted on. I remember that the gentleman from Louisa asked a question about this very matter when it was up in Committee of the Whole, and for some reason he was induced to abandon the matter at that time. We thought this matter was settled and here it comes, with a change of front, in Convention, with limited debate, upon a proposition which goes far beyond what the original proposition was. I do not want to be in the attitude of fighting that matter. I would not do it for anything in the world. I am in favor of these laboring men having their lives and limbs protected; but it does seem to me there ought to be some protection to the other side. There ought to be some protection to the people who pay out their money for the purpose of employing these laboring men. The laboring men cannot get this employment, dangerous though it may be, unless the people who employ them have some protection under the law.

Mr. BRAXTON: I move the pending question.

The pending question was ordered.

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

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

The yeas and nays were ordered, and, being taken, resulted, yeas 7, nays 53, as follows:

Yeas—Messrs. Thomas H. Barnes, Brooke, Cameron, Earman, Hamilton, Mundy, and Robertson—7.

Nays—Messrs. Allen, George K. Anderson, W. A. Anderson, Ayers, Barbour, Bolen, Bouldin, Brown, Chapman, Epes, Fairfax, Fletcher, Flood, Garnett, Gilmore, James W. Gordon, R. L. Gordon, Green, Gregory, Gwyn, Hancock, Hardy, Hooker, Hubard, G. W. Jones, Lindsay, Lovell, McIlwaine, Meredith, Miller, Moncure, O'Flaherty, Parks, Pedigo, Phillips, Pollard, Quarles, Richmond, Rives, Stebbins, Stuart, Summers, Tarry, Thom, Thornton, Waddill, Walter, Wescott, Willis, Withers, Woodhouse, Wysor, and the President—53.

Not Voting—Messrs. Barham, Manly H. Barnes, Blair, Boaz, Braxton, Bristow, C. J. Campbell, P. W. Campbell, Carter, Cobb, Crismond, Daniel, Davis, Dunaway, Eggleston, Gillespie, Glass, B. T. Gordon, Harrison, Hatton, Hunton, Ingram, Claggett B. Jones, Keezell, Kendall, Lawson, Lincoln, Marshall, R. Walton Moore, Thomas L. Moore, Orr, Pettit, Portlock, Smith, Turnbull, Vincent, Walker, Watson, Wise, and Yancey—40.

So the amendment was rejected.

The PRESIDENT: The question recurs on agreeing to the amendment in the nature of a substitute offered by the gentleman from Augusta, the chairman of the committee.

The amendment was agreed to.

Mr. BRAXTON: I believe that concludes the consideration of the report of the committee. I move that the vote by which this amendment was carried be reconsidered.

The motion was rejected.

Mr. HUBARD: I now desire to offer an independent section.

Mr. GORDON: I want to ask if section 11, as amended, will not have to be adopted.

The PRESIDENT: That is the customary motion to make. The Chair understood the chairman of the committee to move to reconsider the vote by which the amendment of the gentleman from Roanoke was rejected. Did the gentleman intend a motion for tae adoption of the section?

Mr. BRAXTON: If I understood the situation correctly, I offered a substitute for that section, and to that substitute the gentleman from Roanoke offered an amendment, which was voted down. Then I understood that the substitute was adopted.

The PRESIDENT: The Chair thinks it requires a vote to adopt the section as amended by your substitute.

Mr. BRAXTON: I did not know that. I supposed that the section, as amended, was adopted.

The PRESIDENT: The question is on agreeing to the motion that the section as amended be adopted.

The motion was agreed to.

Mr. BRAXTON: I move to reconsider the vote by which the section, as amended, was adopted.

The motion was rejected.

Mr. HUBARD: Mr. President, I offer this as an independent section:

"Sec. 29. Provided, no member of this Convention shall be eligible to the position of corporation commissioner, created by this body."

Mr. BRAXTON: Mr. Chairman, I move the pending question upon that.

Mr. HUBARD: Mr. President, I think that is a very poor course for the chairman of the Corporations Committee to pursue, to decline to allow an independent section to be read.

Mr. BRAXTON: Mr. Chairman, I will withdraw the request for the pending question.

Mr. McILWAINE: I move the pending question.

The PRESIDENT: The gentleman from Prince Edward moves the pending question.

Mr. HARRISON: I rise to a point of order. In a preceding section the qualifications of the commissioners have been fixed, and that section provides who are eligible and who are not eligible to appointment to these positions. That section has been voted on and a motion to reconsider has been voted down. I make the point of order that this amendment is not in order.

The PRESIDENT: The Chair sustains the point of order.

Mr. FAIRFAX: I move that the Convention take a recess until 4 o'clock.

Mr. HUBARD: I appeal from the decision of the Chair, and I would like to be heard on that appeal. I have as much respect for the distinguished members of this body as any member in it; but it does seem to me that it would be a wrong and an outrage for this body, which has denounced the Legislature of Virginia in regard to this very matter, to create these offices and allow any member of this body to be elected to them. I want to know if you are going to allow yourselves to be scuttlied——

Mr. BRAXTON: I rise to a point of order. The gentleman is not speaking to the point of order, but to the merits of his proposition.

Mr. HUBARD: The merit of it is what you do not want to hear, I suppose.

The PRESIDENT: The question is, Shall the decision of the Chair be sustained?

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

The yeas and nays were ordered, and, being taken, resulted, yeas 27, nays 30, as follows:

Yeas—Messrs. Barbour, Thomas H. Barnes, Bolen, Bouldin, Braxton, Brown, Earman, Epes, Fairfax, Garnett, Gilmore, Gwyn, Hancock, Hardy, Harrison, G. W. Jones, Keezell, Lovell, McIlwaine, Miller, Moncure, R. Walton Moore, Mundy, Richmond, Stebbins, Wescott, and Willis—27.

Nays—Messrs. Allen, George K. Anderson, W. A. Anderson, Ayers, Brooke, Carter, Chapman, Fletcher, Flood, James W. Gordon, R. L. Gordon, Green, Hamilton, Hooker, Hubard, Lindsay, Meredith, O'Flaherty, Parks, Pedigo, Phillips, Pollard, Quarles, Rives, Robertson, Stuart, Thom, Withers, Woodhouse, and Wysor—30.

Not Voting—Messrs. Barham, Manly H. Barnes, Blair, Boaz, Bristow, Cameron, C. J. Campbell, P. W. Campbell, Cobb Crismond, Daniel, Davis, Dunaway, Eggleston, Gillespie, Glass, B. T. Gordon, Gregory, Hatton, Hunton, Ingram, Claggett B. Jones, Kendall, Lawson, Lincoln, Marshall, Thomas L. Moore, Orr, Pettit, Portlock, Smith, Summers, Tarry, Thornton, Turnbull, Vincent, Waddill, Walker, Walter, Watson, Wise, Yancey, and the President—43.

So the decision of the Chair was not sustained.

Mr. O'FLAHERTY: I rise to a point of order. The house is adjourned by limitation, the time for adjournment having arrived.

Mr. BRAXTON: I move the chair be vacated until 4 o'clock.

The motion was agreed to, and the Convention took a recess until 4 o'clock.

AFTERNOON SESSION.

The Convention reassembled at the expiration of the recess, the President in the chair.

The PRESIDENT: Before proceeding with the business of this Convention the Chair deems it due to himself and to the Convention to make a statement. When the gentleman from Buckingham offered his proviso the gentleman from Frederick raised a point of order against the consueration of that proviso. As read by the gentleman from Buckingham the Chair was impressed by the idea that the proviso was not in order, and the point having been raised the Chair felt bound to rule upon it. He ruled promptly, because the hour of adjournment had arrived, and the members were evidently impatient to retire from the hall. Subsequent reflection has satisfied the Chair that his ruling was correct. In the first place this amendment should have been offered to section 3, which fixes the qualifications of the members of the commission. Section 3 had been adopted. A motion to reconsider had been voted down. The Chair was of opinion that it was too late to offer this as an additional qualification after the Convention had passed upon that subject and voted down a motion to reconsider the section containing the qualifications for these commissioners. If it was intended as an ordinance, fixing the qualifications of the officers, it should have been referred to the committee having jurisdiction of that subject. We have a Committee on Elective Franchise and Qualifications for Office, and this matter should have been referred to that committee. Again, as read by the member from Buckingham, although altered since, this was distinctly a proviso to the last preceding section, and was clearly not germane. For these reasons, because it was too late, because the qualifications of members of the commission had been fixed in section 3, because there is a standing committee of this Convention having jurisdiction of the subject of qualifications of office and because, as read by the gentleman from Buckingham and as caught by the Chair, it was a proviso to the last section and clearly not germane; the Chair sustained the point of order. The Chair has felt it due to himself to give these reasons for the ruling. Of course he bows to the decision of the Convention and does not ask any reversal of his action.

Mr. HANCOCK: I move that the vote by which the appeal from the decision of the Chair was sustained, be reconsidered.

Mr. FLOOD: Mr. President, I would like to ask how the gentleman from Chesterfield voted on the proposition.

Mr. HANCOCK: I voted to sustain the Chair.

Mr. FLOOD: Mr. President, I rise to a point of order. The gentleman cannot move to reconsider.

Mr. MEREDITH: I will make the motion to reconsider. I voted in the negative.

Mr. HARRISON: It does seem to me that the ruling of the Chair is clearly correct. If, after the qualifications of officers are fixed by one section, additional qualifications can be imposed by offering a separate and independent section, it seems to me that is absolutely impossible for us ever to come to any final conclusion. By section 3, the qualifications of the persons who are entitled to be members of this commission were fixed. Every qualification that this Convention thought proper to impose was included in that section. It was provided that one of the members should have the qualifications of a judge of the Supreme Court of Appeals. No other qualification was imposed.

Mr. BRAXTON: Will the gentleman permit me to interrupt him?

Mr. HARRISON: Yes, sir.

Mr. BRAXTON: There were other qualifications proposed by that section. One was that he should not be a practicing lawyer and another was that he should not be in the employ of the railroads; and now there is an additional one proposed, that he should not be a member of this Convention.

Mr. HARRISON: That only emphasizes my position. There is nothing final in any section that we have adopted and by simply going through the form of offering an independent section we can add to or subtract from the provisions we have already adopted.

Mr. WITHERS: The qualifications contained in section 3 are these: "No person employed by or holding any office in reference to any transportation or transmission company, or who is in any wise financially interested therein, shall hold office as such commissioner, or perform any of the duties thereof. At least one member of said commission shall have the same qualifications prescribed for members of the Supreme Court of Appeals. The qualifications of only one member of this commission are expressed. It is expressly provided that at least one member shall have the qualifications prescribed for members of the Supreme Court of Appeals. The only other provision is that a party connected with the concerns that are sought to be controlled shall not be a member of this board.

I submit, Mr. President, that this is not a contradiction of section 3. If I thought so I should vote to sustain the Chair. This ruling is in the distinct line of the rulings that Chair has made with reference to points of order made by the gentleman from Albemarle (Mr. Boaz) and myself when resolutions were offered, in the nature of independent sections, to amend the report where there was a conflict between the proposed amendment and the sections already adopted. The point of order was made that those resolutions were out of order and they were ruled in order.

The PRESIDENT: The gentleman misapprehends the position of the Chair. The point the Chair ruled on was that it was out of order because, first, the amendment came too late; secondly, because section 3 had undertaken to prescribe the qualifications of the members of this commission and that section had been passed and a motion made to reconsider, which was voted down. The Chair was of the opinion, when the proviso was read by the gentleman from Buckingham that it was too late to offer it because it was not germane to the section which immediately preceded it.

Mr. WITHERS: If the Chair will permit me, I desire to say that I bow with the profoundest respect to his opinion, to his personality and to his rulings; but I submit that this is the identical point of order that I urged against the amendment of the gentleman from Rockbridge, that it came too late, that it was conflicting with two other sections of the same report which he proposed to amend by offering an independent section thereto at the end thereof. I simply say what I do to call the attention of members of this Convention to the third section. This section does not attempt to qualify these men at all, except as to one who must have special qualifications. The other two are left wide open. I submit that if this point of order is well taken we are inevitably driven to the conclusion that the three points of order raised in the course of the proceedings prior to this must be likewise maintained and sustained by this Convention, because—

Mr. FLOOD: As I caught the ruling of the Chair, he does not think the resolution in the shape it now is, is out of order.

The PRESIDENT: The Chair held that the resolution was out of order as read from the desk by the gentleman from Buckingham. He read it as a "proviso."

Mr. FLOOD: I desire to ask the Chair this question: As the member from Buckingham has changed his resolution so as not to be a proviso to Section 19, but to be an independent section, does the Chair hold it is not in order?

The PRESIDENT: The Chair ruled that it was not in order on the ground that it came too late. The Convention had already passed upon that subject when it adopted Section 3. The Chair also thinks it is not germane to the section which it immediately succeeds.

Mr. WITHERRS: I hope the Chair understands that I say what I do with the utmost deference and that I hesitate long before I vote against his ruling; but I ask the attention of the Convention irrespective of the merits or demerits of this resolution, to this matter as a question of proper parliamentary procedure, and I maintain that an independent section, which is an amendment to any section already offered, and in conflict therewith, is out of order, and if it comes too late it ought to be declared out of order.

Mr. MEREDITH: You maintain, then, that notwithstanding the language in which it was offered, as a proviso, that it was in order.

Mr. WITHERS: The Chair rules that as it is now offered it is out of order.

Mr. MEREDITH: It has been offered as a proviso. I voted against sustaining the decision of the Chair; but since he calls our attention to the language in which it was offered I shall vote to sustain the Chair. I am moving to reconsider the vote by which we refused to sustain the Chair. I would like to have you state whether you think it was in order, having been offered as a proviso.

Mr. WITHERS: If it was offered as a proviso to Section 18, I think, unquestionably, it is out of order. If it was offered as an independent section——

Mr. MEREDITH: When we come to that we will be prepared to vote upon it; but at the time it was offered it was offered as a proviso.

Mr. FLOOD: As I understand the gentleman from Buckingham has withdrawn the original proosition.

The PRESIDENT: The gentleman from Buckingham after the ruling of the Chair, changed the language of his amendment.

Mr. FLOOD: I do not see then what is before the house.

Mr. WITHERS: As I understand it, the question before the house is the ruling of the Chair on the substance of the roposition, the gentleman from Buckingham having changed it from a proviso.

Mr. HUBARD: I will withdraw that resolution and offer this.

Mr. MEREDITH: I understand the question before the house is my motion to reconsider the vote by which we refused to sustain the ruling of the Chair on the paper as it was offered.

Mr. WITHERS: That reopens the whole question.

Mr. MEREDITH: I want it to be reopened. I votaed against sustaining the decision of the Chair, and I want to reconsider that vote, as I think I was wrong.

The PRESIDENT: The question is on the motion of the gentleman from Richmond to reconsider the vote by which the decision of the Chair was over-ruled, to-wit, that the proviso offered by the gentleman from Buckingham was not in order.

Mr. HUBARD: I have no personal feeling in the world about this matter. I desire to say, however, that the section was an independent section and stated so on its face. It as simply a prohibition to apply to the individual members of this body, and requiring them to do the handsome, courteous and proper thing themselves, as they have declared the Legislature ought to do.

Mr. FLOOD: It seems to me that, to meet the objection of the gentleman from Richmond and the objections suggested by the Chair, he could restore the amend