PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION.

OFFICIAL REPORT.

Mr. Daniel Speaks for Submission to the Present Electorate.

Friday, May 23, 1902.

The Convention met at 10 o'clock A. M.

Prayer by Rev. P. B. Price, of Richmond.

The PRESIDENT: The Secretary will call the roll.

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

Present—Messrs. Allen, George K. Anderson, W. A. Anderson, Barbour, Barham, Manly H. Barnes, Thomas H. Barnes, Blair, Boaz, Bouldin, Braxton, Bristow, Brooke, Brown, Cameron, P. W. Campbell, Carter, Chapman, Cobb, Daniel, Dunaway, Earman, Epes, Fletcher, Flood, Garnett, Gilmore, Gillespie, Glass, James W. Gordon, R. L. Gordon, Green, Gwyn, Hancock, Hardy, Harrison, Hatton, Hooker, Ingram, Claggett B. Jones, G. W. Jones, Keezell, Kendall, Lawson, Lincoln, Lindsay, Lovell, Marshall, McIlwaine, Meredith, Moncure, R. Walton Moore, Thomas L. Moore, Mundy, O'Flaherty, Orr, Parks, Pedigo, Pettit, Phillips, Pollard, Portlock, Quarles, Richmond, Rives, Robertson, Stebbins Tarry, Thom, Turnbull, Waddill, Walker, Walter, Watson, Wescott, Willis, Wise, Withers, Yancey, the President—80.

The PRESIDENT: It appears from the call of the roll that eighty delegates are in attendance—more than a quorum.

The Secretary will read the Journal of yesterday's proceedings.

The Journal of yesterday's proceedings was read and approved.

METHOD OF ADOPTING CONSTITUTION.

The PRESIDENT: The order of business this morning is the consideration of the resolution offered by the gentleman from Campbell (Mr. Daniel) fixing the method of adopting the Constitution.

Mr. DANIEL: This Convention, Mr. President, has framed, in my opinion, a most excellent constitution. While articles and provisions in it, here and there, might meet the dissent of every member in this body—one or more of them—I believe it is the judgment of the intelligent people of the Commonwealth that this body has laboriously and faithfully performed its task and that it is their earnest and anxious desire that their work should be brought to fruition and fully accomplished by the new Constitution becoming our fundamental law. Such seems to me, Mr. President, to be the predominant judgment of the people of the State, but I speak, perhaps, largely under the influence of the sentiment in the town of Lynchburg, where I was born and reared, and in which I practice my profession, and of the county of Campbell, in which I live and where I have had familiar opportunities to become acquainted with the opinions of its people. At the last court day of Campbell court there was a large crowd in attendance, and I found the pervasive sentiment was a desire that this Constitution should be adopted. Before I attended that court I had heard by letter, and had in conversation also heard, expressions of sentiment from many of my constituents. But I was surprised to find in my attendance upon court how general and how deep seated was the desire for the consummation of the work of this Convention. I should say also, in perfect candor, that the larger predominant sentiment was in favor of its proclamation.

I did not myself feel, Mr. President, that in justice to my own record, in justice to the record of the party to which I belonged, as I understood it, or in justice to the people of the State, of whom I have been for many years a representative, that I could personally agree with that sentiment. I, therefore, made to the people a plain and as fair a statement as I am capable of making, recited the history of the Constitution in its formation in this Convention, told them of the articles therein from which I dissented, applauded those in which I agreed, and further informed them that in my judgment it was my duty to vote to submit this Constitution to the entire electoral body of this Commonwealth. While the largely predominant sentiment of my audience was in favor of its proclamation, they did me the honor to pass a resolution in which they gave me plenary powers to vote as I might deem right, and further did to me the greatest honor which I feel I have ever received in my life from my constituents—expressed their entire confidence in me.

Grateful as I am to that noble people of Campbell for the many political honors which they have conferred upon me, I was more deeply touched and feel more grateful to them for this than for any other, although it leaves me in the attitude here of voting, as I shall candidly state, against the majority sentiment of those from whom I received my commission as a representative in this body.

Recognizing the fact, Mr. President, that this is a representative government, recognizing, too, that I am the servant of the people of Campbell, and they my master; recognizing further that I am but the agent and they the principal in this transaction, I related to them the circumstances which made me feel that as a square, honorable man, I should cast my vote in this manner. I did not beg or ask them in my address not to instruct me, though in some of the papers it has been so stated. I simply gave them a history of the matter, and of party and personal expressions, and asked them to consider them, and do as they thought right. I am both proud and grateful for the fact that they have left me free to do as I deem right, without antagonism to them.

I need hardly recite the circumstances, Mr. President, which brought me to this conclusion, so familiar are they to those who have followed the history of this transaction. And I might, perhaps, say nothing upon the subject but for the fact that my own position is somewhat peculiar and exceptional. In the year 1899 the General Assembly of the State passed a resolution by which it was provided that the question should be submitted to the people of the Commonwealth, "Shall the Constitution be revised and amended?" Before that question was put to the people for them to pass upon, there was a Democratic conventional assembly in the city of Norfolk. The people of Virginia were divided upon the question. The Convention in some degree was divided also. I had the honor in that Convention to ocupy a place upon the platform committee. I did not draw that platform. Its language is not my own, but I made it my own by voting for its adoption. Before that convention met, on my opinion being asked by constituents in various parts of the State, I wrote a letter which was widely circulated, in which I stated that I was in favor of calling the Constitutional Convention, and was also in favor of submitting its work to the people in the ordinary way for ratification or rejection. At the Convention I expressed myself to the like effect, and after the Convention in various speeches I made in different parts of the Commonwealth, I so interpreted the action of the Convention, and so announced my own conclusion. The work having been done according to the plan of that Convention and of the General Assembly, I feel that it is not for me to unpledge myself, nor for any one else to unpledge me, and that I am bound in honor to deliver the vote in the manner that I prefigured it.

I have no question of honor to raise with any gentleman who differs from me. I recognize the fact that each of us here is in the presence of his peers. I make no claim for myself. On the contrary, I disclaim that I esteem myself to be in the least degree more honorable, more honest, or more faithful, than any of the honorable gentlemen who are my associates upon the floor. It is a matter of conscience, and a matter of interpretation for each gentleman according to the dictates of his own intelligence and heart. I thus interpret my own duty, and have submitted my interpretation to my constituents, and I have their free accord to my utterance, and my action here in accord with it.

I collected, Mr. President, the opinion which I thus express not only from my action, but from the action of the political party of which I am a member. At the convention in Norfolk they expressed themselves in this language:

"It is the sense of this convention that in framing a new constitution no effort should be made to disfranchise any citizen of Virginia who had a right to vote prior to 1861, nor the descendant of any such person. And that when such constitution shall have been framed it shall be submitted to a vote of the people for ratification or rejection; and the Democratic party pledges that the expenses incident to a constitutional convention shall be kept down to the lowest possible figure."

Comment has been made upon the fact that in the phrase that expresses the sense of this convention a mere opinion is put forth, and that in the latter phrase a pledge is made. I admit that critically and technically the comment is correct. It was but an opinion which the Norfolk convention expressed; but this, Mr. President, is the usual manner in which political bodies communicate their views to the public. It was a declaration of their conviction that the Constitution when prepared should be submitted to the people. It little matters in what phraseology that conviction was couched. It was received by the people of this Commonwealth—here, there, and everywhere—as a declaration by the Democratic party, which had paramount direction and influence in the matter, that this Constitution should be submitted to the people. Both in the expression of what should be submitted, and in the expression of whom it should be submitted to, I think there is fair and necessary implication that the whole Constitution should be submitted to the whole people.

What was it that the convention declared should be submitted? The Constitution to be framed by this body, and not a part of the Constitution. To whom was it to be submitted? To the people, with no expression of any part or fragment of the people. Whetever may have been in the minds of the gentlemen who constituted that convention; whatever may have been said in any previous organization of a portion of those members; whatever may have been the uppermost desire and intent and purpose of those who constituted it, this is the language which they uttered to the people of Virginia, and this is the interpretation which the people of Virginia, including myself, placed upon it.

It has been said, Mr. President, that the people have changed their minds. In large degree I do not doubt that this is true. In my own section of country, I know, if I may know anything which I collect by communing with the people in their homes, upon the street, and in the public gatherings, I do know that the opinion has changed. I believe that change of opinion to have been widespread. What I say and what I do know of my own county I hear from other gentlemen here from other counties like accounts, which are as substantially verified as my own; and yet, Mr. President, although the people have changed, as myself a party to this matter, as one who communicated their interpretation of this transaction to the whole people, I do not feel that I am permitted in my own conscience to change the conduct which I prefigured as that which would be the conduct of my party and myself. I admit that this is a serious and a delicate question for any gentleman to determine.

I admit that, in endeavoring to clearly analyze my own duty and to deduce therefrom what was the highest standard of public conduct and personal honor that should guide me, I have not been without my perturbations of spirit in the face of the sentiment of so many of my constituents; and yet, sir, this is my conclusion as to what is just and right; for whatever may be the appearances o public opinion, which are often misleading; whatever may be the pronunciation of public opinion in this meeting or in that, there is nothing more uncertain in human affairs than the verdict of a jury or the verdict of the people at the polls I have been before elections in which I felt so confident of the result that I would have given nothing to guarantee the morrow's results, and I have seen the enunciation in the paper the next morning the other way. I have been in those contests in which I contemplated with apprehension the result, and have seen the people carry the election as I had hoped with overwhelming majorities. I cannot measure my own conscience and my own judgment as to my opinions by the sentiment of the people, commanding as it is of the highest authority in a government which recognizes that all power adheres in and is derived from them.

I shall not, Mr. President, pursue this matter in its intricate details. I believe the opinion of this body has been made up. I should have not felt it necessary to declare my own but for the peculiar attitude in which I find myself. As to the power of this Convention to proclaim the Constitution, in my own mind there is no doubt, and in speaking upon this subject I feel that it is not unbecoming that I should state my own opinion upon the whole of it.

The Constitution of the United States, under which we live, and under which this country has gone forward and progressed as the greatest republic of all time, is a Constitution which never received the individual vote at the polls of a single one of the enormous population over which it is the fundamental law. Neither the Articles of Confederation nor the perfected Constitution of the government of the United States after the War of the Revolution, nor any amendment to that instrument of the fifteen which have been adopted ever received the sanction of a single suffragant directly given at the polls. This whole instrument was ordained, even as it was prepared, by conventional authority.

Of the Constitutions of the States of this Union, thirteen of which were adopted about the time of the Revolutionary War, nearly all of them were similarly ordained. It is true that Thomas Jefferson, one of the most profound constitutional lawyers who ever lived upon this earth; a man whom I have always regretted was not a member of the convention which framed the Federal Constitution; a man whom I have always regretted was not a member of the Supreme Court of the United States in the formative days of this republic, took the ground that our first Constitution of Virginia was like a mere act of the Legislature, because of the fact that it was proclaimed and ordained without a vote of the people; but he was not sustained in that judgment. The General Court of Virginia overruled it a case reported in 1st Va. Cases, 20—a pioneer case in which the doctrine of constitutional authority to ordain a Constitution is set forth. I have read somewhere that George Wythe, the chancellor of renown, the tutor of Jefferson, rendered the earliest, or one of the earliest decisions to the like effect.

Thus early, Mr. President, in the history of this republic, both in State and in nation, the doctrine was laid down and sustained that conventional authority could ordain and proclaim a Constitution. And in Virginia, whatever may be the tendency of opinion in other States; whatever may be the peculiar decision of a court in any particular State, where all the facts do not run in parallel lines with our own, this must be esteemed, in my judgment, to be American constitutional law. In Arkansas, in 1836, in Florida, in 1839, Constitutions were proclaimed. In Mississippi, in Louisiana, and in South Carolina we have recent illustrations of a similar authority.

In our own particular constitutional history, Mr. President, we have this idea constantly illustrated and it is set forth, in my opinion, in the Constitution under which we live. The Constitutional Convention of 1830 in effect proclaimed and ordained its suffrage law by extending the electorate to which the Constitution was submitted. What was this but ordainment? In the present Constitution of the State we have two methods for the revision or the amendment of the existing Constitution. One is by a process through which the General Assembly submits to the people a particular amendment which it has itself matured. After another session of the General Assembly that amendment goes before the body politic at the polls and they pass upon it. There is also another provision for the amendment of the Constitution, which provides that the General Assembly shall submit to the people, by a particular process therein described, the question, "Shall a convention be called to revise and amend the Constitution?" That term "amend" is to my mind conclusive in its meaning. This Convention has revised the Constitution. To "amend" it by the new one is to ordain it. In Federal legislation since the foundation of the government a somewhat analogous question has been presented. The House of Representatives originates tax bills. The Senate has during session of Congress, the question is raised when the Senate has framed an entire document totally dissimilar from that which it is seeking to amend, and seeks to substitute it, that this is not an amendment in the sense of constitutional law, but undertaking to revolutionize, upset and substitute the whole matter. But invariably Congress has decided that term, "amendment" is a broad and comprehensive term; that if you can amend one word you can amend all words, that if you can amend one line you can amend all lines, that if you can change and alter one provision you can change and alter all provisions.

In this broad general parliamentary sense was that term used, in my opinion, in this Constitution. The amendment to the Constitution applies to all things in the Constitution, and the power to amend is the power to control and to adopt and to make the amendment of force and effect in its enunciation. The Kentucky case with which this body has been made familiar by frequent citation in my opinion sustains the view I have presented; and I might readily multiply authorities to the like effect if I deemed it necessary to do so.

I shall not, Mr. President, for my part, prolong the discussion. I notice that gentlemen frequently deprecate the speaking so much by other people while they do not fail to exercise that privilege themselves. I am well aware that the people are desirous that the Convention should conclude its labors, and I appologize for breaking a good example by so long detaining the Convention from that conclusion. But before I take my seat, sir, may I be permitted to congratulate my colleagues upon the noble work which they have accomplished. While it is due to candor that I should say there are articles in this Constitution that I would have voted and spoken against had I not been, unhappily to myself, detained from full attendance upon this Convention by sickness, the Constitution as a whole is a work, in my opinion, worthy of the time-honored State for which it has been framed, and confers great credit upon the honorable gentlemen who have so patiently and ably worked to accomplish it. (Great applause.)

Mr. HARRISON: Mr. President, I had not intended to submit the few remarks I wish to make upon this question at this time, as I only reached the Convention hall this morning. But as there seems to be some indisposition upon the part of the other gentlemen who will be heard in this matter to speak at the present time, and as what I have to say will be very brief, I will not delay.

I heartily agree with the gentleman from Campbell(Mr. Daniel) that this Convention has done a magnificent piece of work. There are some features of the proposed Constitution which do not meet with my hearty approval, but there are so many advantageous provisions in it that the advantage in favor of the Constitution in my judgment is simply overwhelming. I believe we have a Constitution under which the people of this State can live happily and under which the State will prosper. I do not, however, agree with the gentleman from Campbell as to the powers of this Convention. It is a matter of serious import, because if this Constitution is proclaimed without the legal right so to do, the whole work may go for naught. In case of proclamation the work of this body can not be made the work of the people of Virginia without a contest before some tribunal, which will pass upon the question of whether or not we have the power, which we assume to exercise here. I am as firmly convinced as I am of any legal proposition, that, if we assume to transgress the authority that the people have put into our keeping, that the courts of this land will declare what we attempt to do absolutely nugatory. Now I ask attention first, to the proposition that no constitution has the power to place any limitation upon the power of the people to change or alter the constitution when they so please. The very head line of the Bill of Rights in the proposed Constitution, in the old Constitution, in the Bill of Rights as drafted by George Mason originally, in the Bill of Rights which the blood of heroic ancestors has made the fundamental law of this State sets out that there are certain inherent, inalienable, and indefeasible rights, which no compact can take away from the people. Such is the language: "That all men are by nature equally free and independent, and have certain inherent rights when they enter into a state of society, of which they cannot, by any compact, deprive or divest their posterity."

And one of these inherent, and inalienable, and indefeasible rights is that which is contained in the provision:

"That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and is most effectually secured against the danger of maladministration; and, whenever any government shall be found inadequate be the agents of the people who elected them, but of the existing Constitution that confers the power upon them. I, therefore, do not agree with the gentleman from Campbell, that article xii., section 2, confers or can confer any power on this Convention. Such an attempt is wholly nugatory and void, if any such attempt has been made.

In the very section in which this Constitution is said to confer sovereign powers upon the representatives to the Constitutional Convention is a clause which says that they shall pass no law impairing the right of suffrage. Are you going to look for the powers of the delegates to a constitutional convention which says that they shall have full powers and claim full powers from that provision in the Constitution, and yet deny that the limitation which that Constitution puts upon those powers is of any effect? Here is a clause, section 11., article 12, which says a constitutional convention shall be called to amend and revise the Constitution, and in the same clause says that they shall not have the power to alter certain provisions in regard to suffrage. Here is, if you please, a grant of authority, and here is a limitation of that authority. How can you say that a constitutional convention can have the power to give authority which the people cannot take from them, and yet say that the limitation which that Constitution itself, puts upon their powers is void and of no effect? I venture to say there is not a lawyer in this body who will say that that provision in our Constitution which says:

or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter and abolish it, in such a manner as shall be judged most conducive to the public weal."

It is an inalienable right that cannot be alienated by any representative body of the people. It is an inalienable and indefeasible right of which the people themselves, cannot deprive their posterity. If the people have not the power to alter and amend their constitution as their interests may demand, then the sceptre has departed from Jacob, and the government under which we live is not a government of the people, by the people, and for the people. Sovereignty resides elsewhere than in the people. It is an inalienable and indefeasible right which the people of one day and generation cannot impair or deny to their posterity. It is the birthright of liberty, of which each succeeding generation of Virginians is trustee for their posterity. Constitutions may prescribe the methods of amendment and this method may be resorted to if the people will, but no constitution can deny or impair the right to alter or amend as they will. Constitutions can confer no power upon delegates to future Constitutional Conventions, nor deny to the people the right to confer such powers as they think expedient. This would to confer powers to frame a government not founded on the consent of the governed. If such were possible, then the delegates to a Constitutional Convention would not

"Provided, that no amendment or revision shall be made which shall deny or in any way impair the right of suffrage, or any civil or political right as conferred by this Constitution, except for causes which apply to all persons and classes without distinction is valid and binding upon us; and yet is not that a restriction on the powers of the delegates to this Convention? And if it is a restriction, how can you say that the Constitution can give powers, and yet ignore the limitations which have been placed upon them by the same Constitution?

Gentlemen, either that Constitution has full powers or it has no powers at all If a Constitution can prescribe the powers of the delegates to future constitutional conventions, then you must take the restrictions it imposes. I claim that it cannot confer powers nor impose restrictions, and that we cannot look at the provisions of the existing Constitution to see what powers we have here; but must look elsewhere.

Now, where do we look? Where but to the act under which we were elected? That is our power of attorney. I desire gentlemen, to call attention, before I go into my own views, upon this subject, to what some able writers and some able judges have said. I suppose that no man stands higher before the courts in this country than Judge Cooley. It is before the courts that we have got to meet this issue, and not by resolutions in this body.

Judge Cooley says:

"In accordance with universal practice, and from the necessity of the case, amendments to an existing constitution or entire revisions of it, must be prepared and matured by some body of representatives chosen for the purpose. It is obviously impossible for the whole people to meet, prepare, and discuss the proposed alterations, and there seems to be no feasible mode by which an expression of their will can be obtained except by asking it upon the single point of assent or disapproval. But no body of representatives, unless specially clothed with power for that purpose by the people when choosing them, can rightfully take definite action upon amendments or revisions; they must submit the result of their deliberations to the people—who alone are competent to exercise the powers of sovereignty in framing the fundamental law—for ratification or rejection. The Constitutional Convention is the representative of sovereignty only in a very qualified sense, and for the specific purpose, and with the restricted authority to put in proper form the questions of amendment upon which the people are to pass; but the changes in the fundamental law of the State must be enacted by the people themselves."

And Mr. Cooley pronounces the highest encomiums upon Mr. Jameson's work. He says that but little has been left to be said and he endorses emphatically all that Mr. Jameson has said. I have not Mr. Jameson's work here, but it is emphatic that the right to amend the Constitution, unless specific authority is conferred, rests with the people alone.

Now, sir, the new edition of the American and English Encyclopedia of Law, in its text, says:

"A constitutional convention untrammelled by conditions imposed by the authority calling the convention has power to enact a new Constitution to go into effect without being submitted to the people for ratification. But where the act which a convention derives its powers provides for the submission of the convention's work to the people in a specific manner, the convention has no power to provide for its submission in a different manner, and of course where such act, or the Constitution itself, requires submission to the people, it must be so submitted, and only becomes operative upon the approval of the electors."

Mr. President, there have been decisions in this matter, and if I am right in my contention that one Constitution has not the power to confer power upon the delegates to a subsequent constitutional convention, then this case that I hold in my hand is on all fours with the situation of affairs that confronts us.

It is the case of Wells vs. Bain, 75th Pa., State, 39. In that case there was a preliminary act of June 2, 1871, to authorize a popular vote upon the question of calling a Convention to amend the Constitution—using almost the identical words we have here:

"Section 1. That the question of calling a Convention to amend the Constitution of this Commonwealth be submitted to a vote of the people at the general election to be held on the second Tuesday of October next, the said question to be voted upon in the manner following—to wit:

"And all votes cast as aforesaid shall be received, counted and returned by the proper election officers and return judges as votes for Governor are received, counted, and returned under existing law."

In other words, that the people of this State were to vote upon the question whether there should be a Convention to amend the Constitution of the State of Pennsylvania.

A subsequent act, dated April 11, 1872, was passed, to provide "for calling a convention to amend the Constitution."

That act provided that the Constitution should be submitted to the people in a particular method. The Convention submitted its work to popular vote, but not in the prescribed method. Its right to do so was contested, and the Constitution was declared void.

The court in that case is emphatic, and I will ask the pardon of the gentleman of this Convention while I read, at some little length, from this opinion. It is an opinion delivered by one of the ablest judges this country has ever produced, Chief Justice Agnew, and it is so admirably and forcibly expressed that I use the language of the judge in preference to my own.

"Since the Declaration of Independence in 1776, it has been an axiom of the American people that all good government is founded in the consent of the people. This is recognized in the second section of the Declaration of Rights of the Constitution of Pennsylvania, which affirms that the people have at all times an inalienable and indefeasible right to alter, reform, or abolish their governments in such manner as they may think proper. A self-evident corollary is, that an existing lawful government of the people cannot be altered or abolished unless by the consent of the same people, and this consent must be legally gathered or obtained. The people here meant are the whole—those who constitute the entire State, male and female citizens, infants and adults. A mere majority of those persons who are qualified as electors are not the people, though when authorized to do so, they may represent the whole people."

In other words, this is a constitutional provision for the benefit of all the people of the State, young and old, male and female, and the people who are authorized to speak for them are the lawful and qualified electors of the State.

The Court goes on to say:

"The words 'in such manner as they may think proper,' in the Declaration of Rights, embrace but three known recognized modes by which the whole people, the State, can give their consent to an alteration of an existing lawful form of government—viz.:

"1. The mode provided in the existing Constitution;

"2. A law, as the instrumental process of raising the body for revision and conveying to it the powers of the people.

"3. A revolution.

"The first two are peaceful means through which the consent of the people to alteration is obtained, and by which the existing government consents to be displaced without revolution. The government gives its consent, either by pursuing the mode provided in the Constitution, or by passing a law to call a convention. If consent be not so given by the existing government, the remedy of the people is in the third mode—revolution."

"When a law becomes the instrumental process of amendment, it is not because the Legislature possesses any inherent power to change the existing Constitution through a Convention, but because it is the only means through which an authorized consent of the whole people, the entire State, can be lawfully obtained in a state of peace. Irregular action, whereby a certain number of people assume to act for the whole, is evidently revolutionary. The people, that entire body called the State, can be bound, as a whole, only by an act of authority proceeding from themselves.

"In a state of peaceful government they have conferred this authority to speak for the whole only at an election authorized by law. It is only when an election is authorized by law, the electors to represent the State or whole people, are bound to attend, and if they do not, can be bound by the expression of the will of those who do attend. The electors who can pronounce the voice of the people are those alone who possess the qualifications sanctioned by the people in order to represent them, otherwise they speak for themselves only and do not represent the people.

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"If the Legislature, possessing these powers of government, be unwilling to pass a law to take the sense of the people, or to delegate to a Convention all the powers the people desire to confer upon their delegates, the remedy is still in their own hands; they can elect now representatives at will. If their representatives are still unfaithful or the government becomes tyrannical, the right of revolution yet remains."

This case was not called up by a Convention undertaking to proclaim a Constitution. They did not dare to do it. But they submitted the Constitution to a vote in a way that was not authorized by the Legislature of the State, and the Supreme Court said that even if the people had voted to call a convention to amend the Constitution, the act controlled the powers of the delegates to that convention, and they were concluded by it. Why, sir, how can it be said that if the Legislature has disobeyed the mandate of the people, and has not called the convention in accordance with the conditions under which the people commanded them to call it, that thereby the delegates of the Constitutional Convention gain an authority which the people, in electing them, did not give to them.

Mr. ROBERTSON: Will the gentleman permit me to ask him a question?

Mr. HARRISON: Certainly.

Mr. ROBERTSON: I did not quite understand whether that act was passed after the calling of the Convention.

Mr. HARRISON: Yes, sir; the first act was: Shall there be a Convention to amend the Constitution—just as it was in this State. You will find here later on, when I come to the meaning of the word "amend" that this case passed directly on that question, and held that a vote calling the Convention to amend the Constitution did not confer upon that Constitutional Convention the right to proclaim.

Mr. THOM: Do I understand you to say that, at the time the Convention was called there was no power in the previous Constitution under which the Convention was assuming to act; but that they were assuming to act under a call of the Legislature independently of any constitutional authority?

Mr. HARRSION: That is true; but I have endeavored to show that the provision in our Constitution is contrary to the bill of rights, which says that it is an inalienable right of the people to call a convention with such powers as they please to impose upon their delegates.

Mr. MEREDITH: Will the gentleman permit me to ask him a question?

Mr. HARRISON: Yes, sir.

Mr. MEREDITH: What I want to ask pains to prove, as far as you can, that we can not be bound by a constitutional provision.

Mr. HARRISON: Yes, sir.

Mr. MEREDITH: What I want to ask is this: Are you willing to admit that the language is broad enough to bind us, if we could be bound?

Mr. HARRISON: Oh, no; I am coming to that presently. I am going to show, by the history of the State, that such has not been the interpretation put upon that language.

Mr. THOM: I do not want my friend to understand that my question was, in any way, intended as an argument against his position. I will probably reach the same conclusion that my friend does, but by an entirely different process.

Mr. HARRISON: I will ask you this question: If the Constitution had the power to confer upon us powers in controvention of the act of the Legislature under which we are elected, why is not that provision as to suffrage as binding upon us as the other provisions?

Mr. THOM: I have very clear and distinct views upon that subject which I will undertake, in the progress of this debate, to mention, unless my friend wants me to answer now, for the purposes of his argument.

Mr. MEREDITH: I understand the gentleman to say that he would, in the course of his argument, show that the language has been construed contrary to the giving of that power.

Mr. HARRISON: Yes.

Mr. MEREDITH: That constitutional language of that kind has been definitely construed otherwise?

Mr. HARRISON: I am going to show that the words "to amend and revise" do not, under the history of the Constitutions of this State include the power to proclaim.

Mr. MEREDITH: Not even where the language is constitutional?

Mr. HARRISON: I do not see how words get a different meaning in the Constitution from what they have in any legislative act.

Mr. MEREDITH: I understood you to say that this language, used in Constitutions, had been so construed.

Mr. HARRISON: No, I did not. I do not think it has ever been called into question, to my knowledge.

The opinion concludes as to Constitutional Conventions:

"The Convention is not a co-ordinate branch of the government. It exercises once as the British Government was never no governmental power, but is a body raised by law, in aid of the popular desire to discuss and propose amendments, which have no governing force so long as they remain propositions. While it acts within the scope of its delegated powers, it is not amenable for its acts, but when it assumes to legislative, to repeal and displace existing institutions before they are displaced by the adoption of its propositions, it acts without authority, and the citizens injured thereby are entitled, under the declaration of rights, to an open course and to redress at your hands."

These, gentlemen, are the words of a great lawyer considering almost the identical questions that we have submitted before us now. What a court has once said, may not a court say again? I beg of you, gentlemen, to consider this matter. We are preparing here for a fight before the courts, and you have to look at the authorities that influence courts and will have a controlling influence on the courts, and not as what we, ourselves, would like to resolve.

I follow now, Mr. President, the gentleman from Campbell into the history of Constitutional Conventions of this State. The case he has referred to as being decided by Judge Wythe I have not by me, but the General Court in Kamper vs. Hawkins passes upon the validity of the Constitution of 1776. Some of the ablest judges who ever wore the ermine in Virginia delivered opinions in this. I ask you to allow me to read some extracts from that opinion.

Mind you, gentlemen, this is a case that went to this court to test the question whether or not the Constitution of 1776 was a binding force upon the people, because it had not been submitted to their vote.

This was the first Constitution that the people of the State of Virginia ever enacted. It was enacted amidst the throes and perils of war and revolution. Seventeen years after that Constitution had been in operation a case was carried before the court antagonizing its validity. What do these judges say? Judge Nelson says: "It is confessedly the consent of the people which gives validity to a Constitution. May not they then by a subsequent acquiesence and assent give a Constitution, under which they have acted for seventeen years, as much validity, at least, so long as they acquiesce in it, as if it had been previously expressly authorized? The people have received this as a Constitution. The magistrates and officers, down to a constable (for even the mode of his appointment is directed), have been appointed under it. The people have felt its operation and acquiesced."

Therefore it is valid.

Judge Roane says: "This Constitution is sanctioned by the consent and acquiescence of the people for seventeen years."

Judge Henry says: "Accordingly a plan of government was prescribed and accepted by the people which has been uniformly acquiesced in from that day to this time."

Judge Tyler said: "I know it has been the opinion of some critical and speculative gentlemen of considerable merit and ability, too, that our form of government was not authorized by the people, inasmuch as no instructions were given by the people to the Convention at the time the Constitution was established. To investigate this subject rightly we need to go back to that awful period of our country, when we were declared out of the protection of the then mother country, and take a retrospective view of our situation and behold the bands of civil government cut asunder and destroyed—no social compact, no system of protection, and common defence against an invading tyrant—in such a state of nature, without friends, allies, or resources—in such a case what was to be done?

"Those eminent characters to whom so much gratitude is and forever will be due, whose names are enrolled in the annals of America, recommended a convention of delegates to be chosen for that purpose; who were to meet together for the express design of completely protecting and defending the rights, both civil and religious, of our common country. The delegates were so elected and convened. What power had the people, therefore, that was not confided to their representatives? All their rights, all their power, all their happiness, all their hopes, and prospects of success were most indubitably entrusted to their care. They were not betrayed. The people did not say to their representatives that so far ye shall go and no further. Happy indeed for this country, that no such restraint was laid upon them. In order to protect and defend the common cause then a system of social duties was formed. Without this what obedience could have been expected, how could a regular defence have been made? A great variety of departments were established and those who were to execute them had been made responsible to some regular power, and all this was "Has not this policy been sufficiently ratified by time and action? And if it were possible to doubt under their circumstances, has it not been sealed with the blood of this wide-extended empire? And shall its validity be now questioned? For what purpose? To revert back to our former insignificance? It cannot be."

Judge Tucker, the last one to deliver his opinion in this, the most celebrated case in the State of Virginia, bases his opinion upon the ground that, necessarily, at that time, it was impossible to confer any limited power upon the delegates to such a Convention. Our Civil government had been overturned. Could they stand there and say, when they were in a state of war, that they had no further powers? He says it was a matter incident to the overturning of the former government that they should have the power to establish a new one. This, like all of Judge Tucker's opinion is most clearly and forcibly expressed. He says:

"It will be remembered by all of those who are conversant with the history of the rise and progress of the late glorious revolution, that the measure which led to the final consummation of that important event, although they originated in most instances with the legal and constitutional assemblies of the different colonies, made but a small progress in that channel, particularly in this State. The dissolution of the constitutional assemblies, by the Governors appointed by the Crown, obliged the people to resort to other methods of deliberating for the common good. Hence the first introduction of conventions: Bodies neither authorized by, or known to the then constitutional government; bodies on the contrary, which the constitutional officers of the then existing governments, considered as illegal and treated as such. Nevertheless they meet, deliberated, and resolved for the common good. They were the people, assembled by their deputies; not a legal or constitutional assembly, or part of the government as then organized. Hence they were not, nor could be deemed the ordinary legislature; that body being composed of the Governor, Council, and Burgesses, who sat in several distinct chambers and characters: while the other was compesed of a single body, having neither character of governor, council, or legitimate representative among them. They were in effect, the people themselves, assembled by their delegates, to whom the care of the Commonwealth, was especially, as well as unboundedly, confided. The power of convening the legal assemblies, or the ordinary constitutional legislatures, resided solely in the executive. They could neither be chosen without writs issued by its authority, or assemble when chosen, but under the same authority.

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"The Convention then was not the ordinary legislature of Virginia. It was a body of the people impelled to assemble from a sense of common danger, consulting for the common good, and acting in all things for the common safety. It could not be the legitimate legislature under the then established government, since that body could only be chosen under the commission and assembled under the authority of the crown of Great Britain.

"Although the exercise of the authority of the executive government under the crown of Great Britain ceased altogether with the dissolution of that assembly in June, 1775, yet a constitutional dependency, until the succeeding May, or dissolved until the moment of adopting the present Constitution or form of government, an event which took effect by the unanimous voice of the Convention, elected after the final dissolution of the General Assembly, as above mentioned, and assembled at Williamsburg, on the 29th of June, 1776, after six weeks deliberation thereon, and eight days before the Declaration of Independence by the Congress of the United States. This was not then the act of the ordinary Legislature that dissolved the bands of union between us. It was the voice of the people themselves, proclaiming to the world their resolution to be free; to be governed only by their own laws; to institute such a government as, in their own opinion, was most likely to produce peace, happiness, and safety to the individual, as well as to the community. It seems to me an observation of great importance, that the Declaration of Independence by this State was first made in that instrument which establishes our Constitution. The Declaration of Independence took effect, and the convention proceeded no farther; the government as formerly exercised by the crown of Great Britain, being thereby totally dissolved, there would never have been an ordinary Legislature or any other organized body or authority in Virginia.

"Every man would have been utterly absolved from every social tie, and remitted to state of perfect nature. But a power to demolish the existing fabric of government, which no one will, I presume, at this day deny to that convention without authority to erect a new one, could never be presumed. A new organization of the fabric, and a new arrangement of the powers of government, instantly take place to prevent those evils which the absence of government will infallibly produce in any case; but more especially under circumstances so awful and prospects so threatening as those which surrounded the people of America at that alarming period. It would therefore have been an absurdity in the extreme, in the people of Virginia, to authorize the convention to absolve them from the bonds of one government, without the power to unite them under any other, at a time when the utmost exertions of government were required to preserve both their liberties and their lives; but since they are both in form and effect only different clauses of the same act and necessary consequences of each other, to question the validity of the one is to deny the effect of the other. The Declaration of Independence and the Constitution, as the acts of the people, must therefore stand or fall together."

This, gentlemen, is the opinion of this high court giving the reasons why the Constitution of 1776 was valid, without submission, and the opinion is based upon the ground that the condition of the State was revolutionary, and that the Constitution had received the consent and acquiescence of the people for seventeen years without being called in question.

What was the fact about the Constitution of 1829, which was the next Constitution enacted in this State?

So far, gentlemen, from drawing any authority, from that Convention to proclaim the Constitution it seems to me that the voice of the people and the minds of the magnificent representatives of the State then assembled in Constitutional Convention forbids us supposing for the moment that they imagined that they had the right to proclaim a Constitution or any part thereof. In 1829 almost the identical questions found in our present Constitution were submitted to the people—shall there be a Convention called to amend the Constitution? The people voted aye. The Constitutional Convention, assembled under that call, completed their work, and did they proclaim the Constitution?

No. They referred their Constitution to the General Assembly with the request that they should pass a law and submit it to the people who were authorized to vote under its provisions. In accordance with that request, and in obedience to the statute of the General Assembly of Virginia, the Constitution was submitted to the people who were authorized to vote under the new Constitution. But to amend gives authority to proclaim. Why was it deemed necessary then to leave it to the General Assembly to sanction the submission of that Constitution not to the people as then qualified but to the people whom the Legislature of Virginia and Convention should qualify to vote upon it?

Mr. THOM: May I make to the gentleman a suggestion in connection with the historical facts relating to the Convention of 1829-1830?

Mr. HARRISON: Yes, sir.

Mr. THOM: I think the fact is that there was an act of the General Assembly of the State authorizing the submission to any electorate that the Constitutional Convention might select.

Mr. HARRISON: But a subsequent act prescribes the electorate to which it should be submitted.

Mr. THOM: I understand that. I am only making this suggestion because of a remark which you made in the course of your argument.

Mr. HARRISON: What I claim is that the Constitutional Convention of 1829-1830 did not undertake to proclaim its work or to submit its work, but referred it to the Legislature, calling upon them to pass enabling acts, and that it should be submitted to the people under the terms of that act, and should be submitted to the people who were authorized to vote under

(CONCLUDED ON SEVENTH PAGE.)

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