CONVENTION PROCEEDINGS.

(CONTINUED FROM PAGE EIGHT.)

me to express the deep regret I feel that his chair is now vacant; that our distinguished and honored senator is detained at home by sickness, and thereby we are deprived of his wisdom and counsel. I shall never forget when we first became acquainted. It was on a warm and bright day in June some thirty years ago. Two young fellows were marching under the command of that noble old soldier, Joseph E. Johnston, from Harper's Ferry to Winchester, the beginning of the movement which culminated in glorious victory on the plains of Manassas; both bearing arms upon their shoulders; both tired and weary, and covered with the dust of the march.

Our eyes were brighter then; our steps more elastic. Thus, Mr. Chairman, we met by accident, and formed the friendship which has bound us together thus far in the journey of life, and will continue until death.

He said in his report that Jefferson on one occasion expressed the opinion that "the right to vote should be given to those who pay and those who fight." Both the soldiers and the tax-payers are represented in the basis of suffrage we have recommended. It is certain that under these two provisions a very large proportion of our white citizens would be enrolled as suffragists, but I call the attention of the conference to the fact that the hereditary feature is absent; that the privilege is not, as in the substitute, extended to the descendants of soldiers. But we do not confine the right to vote to those two classes, but confer it also upon those who shall be able to give a reasonable explanation of the general nature of the duties of the various officers for whom they may, at any time, under the laws then existing, be entitled to vote. In the basis of suffrage proposed by the majority you find no servile imitation of that adopted by Mississippi or Alabama, as in that offered as a substitute by the honorable gentleman from Lynchburg. I do not wish to see Virginia trailing in the rear of the other States of the Union. She was foremost in proclaiming the fundamental principles upon which government ought to be founded, and has always marked the way which leads to the safety, welfare, and happiness of her people.

The majority plan, in my judgment, is the best that has been proposed, and I pause to make the acknowledgment that the honor of its authorship belongs to the very able and eloquent gentleman from Norfolk city.

Mr. THOM: Mr. Chairman, I appreciate most highly the encomium which my friend has passed upon my connection with this majority suffrage plan, and while my name has become associated with it, I feel that it is but just for me to say that I am by no means the only author of it, but that the other members of the committee are entitled to the same credit, if there is credit, that I am entitled to for it.

Mr. WISE: Our understanding clause requires that the applicant for registration shall be able to give a reasonable explanation of the general nature of the duties of the officers, for whom he may, at any time, be entitled to vote. He cannot be called upon to interpret a clause of the Constitution, which the highest judicial tribunal of the State or nation might find difficulty in explaining, as provided in the Glass plan, and we give him an appeal from the decision of the registrar to his circuit court.

We only require that he shall possess that degree of intelligence and education which will enable him to discharge properly the duties of citizenship, in the exercise of the elective franchise.

Mr. GLASS: If it would not interrupt my friend too much, I would like to ask him to address his remarks for a little while to the distinction between the plan of the minority, which I desire to take occasion to say, as Mr. Thom did with reference to the majority plan, is not my plan; it has the best features, I think, of all the other plans combined, to this distinction; when a man would seek to be registered under the minority plan, the election officer would be required to submit to him a section of the Constitution to read. Would not every voter in Virginia, who seeks to be register under your plan, have to provide himself with a Code of Virginia, and a copy of the Constitution of the United States?

Mr. WISE: In answer to a former question, propounded by my friend, I admitted that the understanding clause contained in the majority plan gives to the registrar the right to require that the applicant for registration shall define the duties of any officer he may, at any time, be entitled to vote for, under the then existing laws. As it stands at present, I confess that it is subject to the objection, which I urged against the majority plan, that the registrar is clothed with the power, to make it easy for one man, and difficult for another, to become enrolled. I then indicated that I would, at the proper time, offer an amendment, which, in my opinion, if adopted, will obviate that objection, and make it an educational, instead of an understanding clause. My proposed amendment is, that when a person shall offer to register, if not embraced in the clause relating to soldiers, or in that relating to tax-payers, he shall be able to give a reasonable explanation of the duties of the various officers for whom he may be entitled to vote at the next general election succeeding the date of his registration.

The chief distinction between the two plans is this, that that of the majority is not marred by the hereditary feature which exists in that of the minority, by which the descendants of soldiers are exempted from submission to the understanding clause. That our understanding clause is not so severe, so unreasonable, and so drastic as that of the proposed substitute, and if amended, as suggested that the registrar will not have the power to require of one person to exhibit a different degree of intelligence and education from that required of another. But the chief objection to the plan of my friend, as already pointed out, is that after the 1st of January, 1903, there will be no protection for our people against the registration of ignorant negroes, except the capitation tax and their ability to make application therefor in their own handwriting, and to prepare their own ballots. We provide that in addition to those requirements, they shall be able to give a reasonable explanation of the duties of the officers they may be entitled to vote for. So far as the ability to read and write is concerned, we have little advantage over the negroes, as I have already said, but when you call for the exercise of that degree of intelligence, which is required in this clause, then the superiority of the Anglo-Saxon becomes at once apparent. I do not think that the plan of my friend is efficient, while I do think that that of the majority will secure an intelligent electorate, and will preserve us from those dangers, which have caused the assembling of this convention.

But, Mr. Chairman, I wish to exhibit to my friend from Lynchburg, and to the delegates from the white counties of this State, by reference to the figures furnished by the Census Bureau at Washington, what is the true condition in the black counties of Virginia. In the county of Brunswick there are 1,874 white male citizens over the age of 21 years, and 2,136 negroes; the male negroes under the age of 21 years, who soon will make application for the right of suffrage, aggregate 3,171; the whites, 1,837. In the county of Norfolk there are 5,492 whites over the age of 21 years, and 8,432 negroes; 3,419 whites under the age of 21 years, and 7,607 negroes. In the county of Northampton, so ably represented by my friend, Judge Kendall, the white males over 21 years of age exceed the negroes by only 29 majority.

Mr. GLASS: Are you aware of the fact that 1,014 of those negroes did not pay their poll-tax last year?

Mr. WISE: The gentleman will find a large number of the white men delinquent also. When you make the poll-tax a condition precedent to the right to vote, my experience is that the negro will pay as readily as the white man. But I had not finished the figures with reference to the county of Northampton; there are 1,493 white males under the age of 21, and 2,195 negroes. There are twenty-five counties, one-fourth of the whole number, in which the negroes largely predominate, and fifteen or twenty in addition, in which they constitute nearly half of the population. When you take into consideration the figures, which show how the two races will stand, when those now under 21 years of age shall have passed that mark, you will discover that there are, at least, fifty of the counties of the Commonwealth, which will soon be dominated by the African, unless something shall be done to prevent it. Are you prepared for it?

Gentlemen of the Valley and of the Southwest, are you willing that your brethren of the black belt shall be left in that position? I appeal to you, and to the delegates from the Piedmont and trans-Alleghany regions, with all the earnestness of my nature, to save us from that affliction. I feel sure that the brave men, who followed in the thickest of the fight, with such steadfast devotion and courage, the proud standards of Lee and Jackson, will not forsake us in the hour of our trial.

God save the Commonwealth; God bless Virginia, our mother.

Mr. P. W. CAMPBELL: I move that the convention do now adjourn.

The motion was agreed to, there being on a division ayes 27, noes 24, and the convention (at 12 o'clock and 20 minutes P. M.) adjourned until Monday, May 26, 1902, at 12 o'clock meridian.

MONDAY'S SESSION.

Monday, May 26, 1902.

The Convention met at 12 o'clock meridian.

Prayer by Rev. W. F. Dunaway, D. D.

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, Ayers, Barbour, Barham, Manly H. Barnes, Thomas H. Barnes, Blair, Boaz, Bouldin, Braxton, Brooke, Cameron, P. W. Campbell, Carter, Chapman, Cobb, Crismond, Dunaway, Earman, Eggleston, Epes, Fletcher, Garnett, Gilmore, Gillespie, James W. Gordon, R. L. Gordon, Gregory, Gwyn, Hamilton, Hancock, Hardy, Harrison, Ingram, Claggett B. Jones, J. W. Jones, Kendall, Lawson, Lincoln, Lindsay, Lovell, Marshall, McIlwaine, Meredith, Moncure, O'Flaherty, Orr, Parks, Pedigo, Pettit, Phillips, Pollard, Quarles, Richmond, Rives, Robertson, Tarry, Thom, Turnbull, Waddill, Walker, Walter, Wescott, Wise, Withers, Woodhouse, Wysor, Yancey and the President—71.

The PRESIDENT: It appears from the roll call that seventy-one 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.

RESOLUTIONS AND PETITIONS.

The PRESIDENT: The Chair lays before the Convention the petition of John R. Turner, clerk of the Circuit Court of Fauquier county, and other Circuit Court clerks, regarding their tenure of office, as fixed by the proposed schedule of the amended Constitution; also a petition from the clerks of the Circuit Court and County Court of Halifax county.

The petitions were referred to the Committee on Final Revision.

Mr. RICHMOND: I have here a petition submitted by the clerks of my county, which I ask may be referred to the Committee on Final Revision.

The PRESIDENT: It will be so ordered, without objection.

Mr. GILMORE: I have here a petition from the clerks of the County and Circuit Courts of Rockbridge county, in regard to their tenure of office. I ask that it may be referred to the Committee on Final Revision.

The PRESIDENT: It will be so ordered in the absence of objection.

LEAVES OF ABSENCE.

Mr. GARNETT: I ask three days leave of absence, beginning to-day, for the gentleman from Middlesex (Mr. Bristow), and also the same leave of absence for the gentleman from Rockingham (Mr. Keezell).

Leaves were granted.

Mr. INGRAM: I desire to ask leave of absence for one day for the junior member from Bedford county (Mr. Brown).

Mr. THOM: I desire to know, so that I can vote intelligently on that question, which is the junior member from Bedford.

The PRESIDENT: The Chair will refer the request for information to the Committee on the Bill of Rights and Miscellaneous Matters.

Leave was granted.

METHOD OF ADOPTING CONSTITUTION.

The PRESIDENT: The unfinished business before the Convention is the further consideration of the resolution offered by the gentleman from Campbell (Mr. Daniel) in regarding to the method of adopting the Constitution. The gentleman from Richmond city (Mr. Wise) is recognized.

(The remarks of the delegate from Richmond city (Mr. Wise) are withheld for revision and will appear in the record hereafter.)

Mr. WALKER: I move that the Chair be vacated until 4 o'clock this afternoon.

The motion was agreed to and 1 o'clock and 54 minutes the Chair took a recess until 4 o'clock P. M.

AFTERNOON SESSION, 4 O'CLOCK.

The Convention met at the expiration of the recess.

The PRESIDENT: The regular order is the consideration of the resolution offered by the gentleman from Campbell.

Mr. BOULDIN: Mr. President, and gentlemen of the Convention, the county which I have the honor, in part, to represent, has not seen fit to give any instructions to its delegates in regard to the important question which is now engaging the attention of the whole State but have left to their delegates the power of voting as they deem best for the interest of the State. But the sentiment of that people, gathered in various ways, is overwhelmingly in favor of proclaiming the work of this body, and so far as I am concerned, unless some difficulties are hereafter presented which I have not yet foreseen, which satisfy me that this body has not the power to proclaim, I shall cast my vote in favor of proclaiming the work of the Convention. I believe, sir, that it is the right and privilege of the people of the respective counties and cities of the State to have our work submitted or proclaimed as they may desire; and thus believing, I shall so vote as to carry out the will of my people, unless I shall become convinced that the good of the Commonwealth requires that this instrument which we have nearly completed shall receive some other disposition.

Mr. President, the theory of our political system that the people are the source and fountain of all power and that ultimate sovereignty rests with them has become a maxim of universal application in the States of the American Union; and in no State has that doctrine been more uniformly accepted and acted on than in Virginia.

While, however, this is theoretically true, it is also true that as a practical fact the exercise of sovereignty is limited to those who are clothed with the right of suffrage—the voters of the Commonwealth—who alone are authorized to give expression to the voice of the people as a body politic.

Assuming the soundness of these political axioms, we come to consider the question at what time and in what manner and under what conditions can the people as a body politic, in the exercise of their reserved sovereign power, revise their constitutions and amend the same—exercise the right to "reform, alter, or abolish" their form of government, which the Bill of Rights declares to be the "indubitable, inalienable, and indefeasible right of a majority of the community."

With the exception of the right of revolution, with which fortunately we need give ourselves no concern, there are but two known methods whereby the whole people—the State—can exercise its reserved power of reviewing and amending its constitution, of reforming, altering, or abolish its form of government.

These methods are:

1st. The modes of amendment prescribed by the Constitution sought to be amended which are exclusive of all other methods; and

2nd: In the absence of a constitutional provision for revision and amendment an act of the General Assembly, which in that event would alone be authorized to give expression to the will of the people as a body politic.

This, Mr. President, I understand to be the limit that is put upon the power of the people as to calling conventions.

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

Mr. BOULDIN: Certainly.

Mr. THOM: Is it, in your opinion, necessary that there should be no provision in the organic law, in order that the people may set on foot, through the instrumentality of a statute, a method of amending their constitution? or, in other words, is it necessary that the Constitution should be silent in order that they may proceed otherwise?

Mr. BOULDIN: I think that the weight of authority is that when the Constitution provides a method of its own amendment, or revision, that method is an exclusive and not a cumulative remedy, and in that event it must be the controlling and only mode of peaceable amendment. If the Constitution itself is silent on the subject of amendment then the legislature, being the body representing the people, the only body legally authorized to speak for the people cann call a convention. I trust that I have made myself clear.

Mr. THOM: Yes, sir; I merely wanted your judgment on that point, because I think it is an interesting one.

Mr. BOULDIN: That, I think, is perhaps, one of the pivotal points in the determination of this matter; and let me here say that in my judgment, the whole question now under discussion is one of the greatest importance, its consideration is reduced to a narrow compass; although it is the most important question we have been called upon to consider, yet the scope of our investigation is necessarily a narrow one.

It is well established by the authorities that when the Constitution provides its own method of amendment, that method must be strictly pursued.

In the celebrated case of Luther vs. Borden (7th Howard, 1), the Supreme Court of the United States, amongst other things, decided that there were but three methods of amending a constitution, saying in substance, that "All political power originated with the people; but the voice of the people acting in their sovereign capacity, can only be expressed under conditions they have prescribed in their constitutions, or pointed out in statutes consistently with the Constitution, or by revolution."

That is the announcement of the highest tribunal of the land, in a well considered case growing out of Dorr's rebellion in the State of Rhode Island, and the principles announced in it have never been controverted to this day.

The next case of importance in which this subject has been treated by the courts arose in the State of Massachusetts, justly considered one of the foremost States of the Union on all matters pertaining to constitutional government, in which there is a bill of rights almost identical with our own. In the celebrated case of the "Opinion of the Justices" (6th Cushing, 575) in which Chief Justice Shaw delivered the judgment of the court, the doctrine is laid down that when the constitution prescribes the mode of amendment, it is the only method of peaceable revision and amendment. I read from the syllabus of the case:

"Under and pursuant to the existing constitution, there is no authority by any reasonable construction or necessary implication, by which any specific amendment or amendments of the constitution can be made, in any other manner than that prescribed in the 9th article of the amendments adopted in 1820."

"If the Legislature should submit to the people the expediency of calling a convention of delegates, for the purpose of revising or altering the Constitution of the Commonwealth, in any specified part thereof, and the people should, by the terms of their vote, decide to call a convention of delegates to consider the expediency of so altering the Constitution, the delegates would derive their whole authority and commission from such vote, and would have no right, under the same, to act upon and propose amendments in other parts of the Constitution not so specified."

Mr. HARRISON: Will the gentleman permit me to interrupt him for the purpose of asking a question?

Mr. BOULDIN: Certainly.

Mr. HARRISON: Is it not a fact that, in spite of that opinion, a Constitutional Convention was held in Massachusetts, in which they completely ignored that decision, adopted the Constitution, and submitted it to the people for ratification or rejection?

Mr. BOULDIN: I do not know that I can answer that question. I could not get hold of the valuable book of Jameson, which has been so much in demand, and which I believe contains a suggestion to that effect; but I will state that the case of Wells vs. Bain, so much relied on by my friend for the contrary opinion, was utterly ignored by the convention and government of Pennsylvania, and ceased to be operative in the State, as stated in the case of Wood's appeal. I am inclined to think the gentleman has that case in mind rather than the Massachusetts case.

Mr. HARRISON: No, sir; I am thinking about the Massachusetts case.

Mr. BOULDIN: In the Pennsylvania case, which is the only authority of high respectability asserting a contrary doctrine, to that laid down by Chief-Justice Shaw, the court announced the doctrine asserted by my friend from Winchester; but in the very next reported case, that of Wood's appeal, the court said, speaking by Judge Agnew, that the government, having adopted the Constitution, the question in Wells vs. Bain ceased to be a judicial question, and the court could have nothing to do with it. So that, in spite of the decision announced in Wells vs. Bain, the Constitution was adopted.

Mr. HARRISON: I think you are mistaken about the Pennsylvania case. What happened in regard to that case was this: That the Legislature, after the decision of the case, gave validity to the Constitution, recognized it, and made it a de facto government, just as was done in Kentucky.

Mr. BOULDIN: I think I have stated the entire history of the doctrine of Wells vs. Bain, as stated by Justice Agnew.

The doctrine that the voice of the people as a body politic must be expressed in the manner prescribed in its Constitution was announced in Rhode Island when the opinion of the judges of that State was asked by the convention.

The Constitution provided its own mode of correction, and the court held that no other means whatever could be resorted to for the purpose of obtaining an expression of the will of the people as to revision and amendment. The court held that the expression of the one mode of amendment was the exclusion of the other, and cited the opinion of Justice Shaw in the Massachusetts case, that I have just called your attention to.

The announcement of this doctrine is not confined to the States of Massachusetts and Rhode Island. In Nevada the same doctrine has been announced, and the same reasoning relied on, and the same ruling has occurred in Iowa. Indeed, Mr. President, I believe that you will search the books in vain for any well-considered decision in which it is held that a Constitutional convention for revision and amendment can be called in any other way than that provided by itself.

The cases on this subject are few, but I have yet to find any in which it has been decided that any other peaceable mode of calling a convention for revision and amendment can be resorted to when the Constitution itself prescribes the mode of ascertaining the popular will for that purpose.

My able friend from Richmond this morning objected very earnestly to any provision of the Underwood Constitution as furnishing a rule for our guidance here, and demands higher and better authority. I gave him the authority of Judge Cooley, easily one of the ablest men of his day, and an acknowledged authority on all questions of constitutional law. Hear what that eminent jurist says on this subject:

"In the original States, and all others subsequently admitted to the Union, the power to amend or revise their constitutions resides in the great body of the people as an organized body politic, who being vested with ultimate sovereignty, and the source of all State authority, have power to control and alter at will the law which they have made. But the people in the legal sense must be understood to be those who, by the existing Constitution, are clothed with political rights, and who, while that instrument remains, will be the sole organ through which the will of the body politic can be expressed."

"But the will of the people to this end can only be expressed in the legitimate mode by which such a body politic can act, and which must either be prescribed by the Constitution, whose revision or amendment is sought, or by an act of the legislative department of the State, which alone would be authorized to speak for the people upon this subject, and to point out a mode or the expression of their will in the absence of any provision for amendment contained in the Constitution itself."

Again, on page 747, the same distinguished author says:

"Although, by their constitutions, the people have delegated the exercise of sovereign power to the several departments, they have not thereby divested themselves of the sovereignty. They retain in their own hands, so far as they have thought it needful to do so, the power to control the governments they create, and the three departments are responsible to and subject to be ordered, directed, changed, or abolished by them. But this control and direction must be exercised in the legitimate mode previously agreed upon. The voice of the people, acting in their sovereign capacity, can be of legal force only when expressed at the times and under the conditions which they themselves have prescribed and pointed out by the Constitution, or which, consistently with the Constitution, have been prescribed and pointed out to them by statute."

Now, Mr. President, need I go further in the line of authority for the position that when the people speak, through their Constitutions, as to the mode of amendment and revision that mode alone can be resorted to in the exercise of peaceable revision and amendment. I assume the doctrine on this subject as laid down by Judge Cooley to be true at this day, and that this Convention called pursuant to the terms of the Constitution, was called in the only legal manner:

I come now to the consideration of the extent of the powers of revision and amendment conferred on this Convention, and especially with reference to their power to proclaim the Constitution.

I do not understand, Mr. President, that the Convention possesses, of itself, inherent powers, but that it exercises only delegated authority in the nature of sovereign power. I state this position with diffidence, as I am aware that there are able and distinguished gentlemen on this floor who hold that the Convention does possess inherent powers and that when lawfully assembled it is "the incorporate representative of the real body politic, the sovereign people." Such are the views held by that eminent constitutional lawyer and writer, the late John Randolph Tucker, who was universally recognized as one of the foremost constitutional lawyers of his day.

From the best information, however, that I have been able to gather from the authorities I believe it to be the accepted opinion that "the Constitutional Convention is the representative of sovereignty only in a very qualified sense," and for the specific purpose for which it is called by the people. The powers of the Convention are delegated powers and its members must be able to point to the authority under which they act, their letter of attorney defining their powers.

The authority given to this Convention by the sovereign people is to revise the existing Constitution and amend the same, and it was conferred by the people themselves when they gave their affirmative answer to the question "Shall there be a Convention to revise the Constitution and amend the same," submitted to them in the manner ordained by them in their own Constitution.

What are the scope and extent of the powers conferred on the Convention by our commission, our letter of attorney from the people? In my judgment it conveys to us all the power of the State for the specific purpose for which we are assembled. It is broad enough to authorize submission to the present electorate, the new electorate or proclamation of the Constitution, the result of our work.

The power of the people to confer this authority in advance is as ample and complete as their power of ratification of the work when finished. The important consideration to be justly determined is the extent of the powers delegated and it is immaterial whether those powers are given to the Convention in advance of its work or transmitted by ratification of the Constitution when framed.

Judge Cooley, in speaking of the universal practice growing out of the necessity of the case of some body of representatives chosen for the purpose framing and maturing amendments, says: "No body of representatives, unless specially called for for that purpose by the people when choosing them, can rightfully take definitive action upon amendments or revision; 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."

But if they are specifically clothed with the power of revision and amendment by the people in choosing them, their powers can only be limited by a just interpretation of the meaning of the words "revise and amend." If they carry with them the idea of enactment also, then the power to proclaim is as thoroughly established as the duty to submit when no such power of enactment is granted.

Now, sir, what are the powers given to this body by the people speaking as a body politic in the mode authorized by their Constitution.

For the purpose of revision and amendment the General Assembly is authorized by the Constitution to submit to the people this question and no other:

"Shall there be a Convention to revise the Constitution and to amend the same?" Not shall there be a convention to discuss and propose amendments and to advise the same as was the case in the call of the Convention of 1850-1851: Not to revise and amend the Constitution and submit the same to the qualified voters of the State, but the mandate is simply to submit the question, "Shall there be a Convention to revise the Constitution and to amend the same." The General Assembly, as it was its obvious duty to do, submitted the questions to the people as prescribed by the Constitution. Is it possible to take from the meaning of the words "revise" and "amend" the idea of "enactment?" The accepted meaning of the word revise is "to look at again for detection of errors," to "look with care for correction," to "review, alter, and amend, as to review statutes." The word "amend" means to change or modify in any way for the better as by simply removing what is erroneous, corrupt, superfluous, faulty, and the like, by supplying deficiencies, by substituting something else in the place of what is removed, to rectify.

The question submitted to the people was not call a Convention to propose revision and amendment, but to make it.

The Constitution next provides the duty of the General Assembly in case the electors shall decide in favor of calling a Convention. It requires that the General Assembly shall at its next session provide by law for the election of delegates to such Convention. The mandate of the Constitution is peremptory and leaves no discretionary powers in the General Assembly; that body can neither extend nor diminish to the peremptory mandate of the Constitution. It can provide for the assembling of the Convention and when this duty is discharged the powers of the General Assembly in this particular are at an end. The Pennsylvania doctrine leaves the exercise of the power of calling the Convention discretionary with the General Assembly; the Virginia Constitution makes it mandatory on that body to provide by law for the meeting of the Convention.

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

Mr. BOULDIN: Yes, sir.

Mr. HARRISON: Do you contend that the Constitutional Convention of 1869 could confer powers upon the delegates to this Convention?

Mr. BOULDIN: I do not, sir. I answer that question more fully by adopting the position taken by Judge Cooley, by Chief Justice Shaw, by the Nevada court, by the Iowa court and by the courts in almost every case in which that question has been presented, that when a Constitution prescribes the mode of expressing the voice of the people on the question of Convention or no Convention that method is the only peaceable mode by which the people as a body politic can lawfully speak.

Mr. HARRISON: Do you contend, then, that we derive our powers from the Constitutional Convention of 1869; that they have conferred powers upon us as delegates here?

Mr. BOULDIN: I contend that the Constitution has prescribed the peaceable mode in which the great voice of the people can be heard to call into being a Convention; and the moment that that Convention is legally called by the people, either by resolution or in the mode prescribed by their organic law, they are clothed with the powers of the whole people and are not bound by anything that was done by a preceding Convention. That is my attitude on that point.

Mr. HARRISON: If you contend that, according to the language of the Constitution, we derived certain powers from that Constitution, is it not a fact that the Constitution of 1869 gives us our powers and not the people who elected us; and are we not then the agents of the body, and not the agents of the people?

Mr. BOULDIN: I do not contend that the Convention derives any power from the existing Constitution; its power comes neither from the Constitution nor the General Assembly, but from the people, the source and fountain of all State power.

In 1829 Judge Thompson, who, like my friend from Winchester, was a strong advocate under the existing conditions, of the Pennsylvania doctrine, said the claim that the Convention derived its power from the General Assembly was one of supererogation; and I think the same can be said of any such claim in behalf of a former Convention or any General Assembly at this time.

Mr. Chapman Johnson, when speaking of this same Pennsylvania idea (which, in my judgment, would never have been suggested had the existing Constitution contained any provision for its revision and amendment), admitted that the Legislature had no inherent power to direct to what electorate the Constitution should be submitted, but that such power could come only from the people who, he claimed, directed such submission by ratifying and endorsing the act of the General Assembly providing for the election of members of the Convention which also contained a provision prescribing to whom the Constitution should be submitted.

When the Convention of the people assembled the delegates were clothed with all of the powers of the principals and masters, the people, for the purpose of which they were assembled, which were delegated to them by the people, and which can be neither restricted nor enlarged, nor in anywise affected by the provisions of a former Constitution or General Assembly. They were invested with quasi-sovereign powers directly deputed to them by the people.

Mr. HARRISON: If the people wanted to call a Constitutional Convention with restricted powers how would they do it?

Mr. BOULDIN: They would call the Convention in the manner the Constitution provides, to revise and amend; and if the restricted amendments came within the provision of "revision and amendment" the Convention would have full power to act on them.

Mr. HARRISON: Will you allow me to ask you one more question? If the Constitutional Convention of 1869 had the right to confer power on the delegates to this Convention, is not the restriction they put upon the powers of the delegates here as binding as the powers they have conferred?

Mr. BOULDIN: I am going to give my attention to that matter later, and will deal with it fully in two aspects; first, as showing the intention and meaning of the Convention by the use of these words, "revise and amend," and, secondly, as to their power to make such a provision. I was about to say, when diverted by the last question, that the power exercised by the people when, by their affirmative vote, they determined that a Convention should be called, was not the moral power which, in the Pennsylvania case, according to Judge Agnew, alone existed. Judge Agnew said, in the Pennsylvania case, that the first vote of the people simply put on the Legislature such a moral obligation to call a Convention as the expressed wish of the people would create; but that there was no mandatory direction to them to call a convention; it remained perfectly discretionary with that body to call the Convention or not. Here, gentlemen, is the great difference between this Pennsylvania doctrine and the Virginia doctrine. Our Constitution provides that in case the electors shall decide in favor of a Convention the General Assembly, at its next session, shall provide by law for the election of delegates to said Convention; not that they may provide by law for such Convention. The language is clear-cut, direct, and mandatory, that it shall call.

Is there any authority under the provision to direct the delegates to assemble at the Capitol in general Convention "to consider, discuss, and propose a new Constitution or alterations and amendments to the existing Constitution" and to direct that the result of the labors shall be submitted for ratification or rejection to the people?

If any gentleman here feels that this Pennsylvania doctrine gives him trouble, I beg of him to draw the distinction and carry it clearly with him all the time, that according to the ruling of Judge Agnew in the Pennsylvania case there was no mandatory direction to the Legislature to call a Convention. The whole matter was left discretionary with the General Assembly. It could either call it or not, as it saw fit. The Virginia Constitution leaves no such discretion with the General Assembly; that body is bound by the mandate of the Constitution as long as it exists, and that mandate is that that body shall provide by law for the election of delegates to such Convention, and nothing more. That is the full scope and power of the letter of attorney addressed to the Legislature by the sovereign people, their masters, and when it undertakes to take from or add to the terms of that command it transcends its power; and so much of their act as modifies or changes the mandate of the Constitution is, in my judgment, absolutely null and void.

I recall here that it was argued on this floor by the able gentleman from Winchester that if one provision of the act of the General Assembly for the election of delegates to the Convention is void, necessarily all the remaining provisions of the act must fall. I do not so understand the law. I understand it to be a canon of construction, universally recognized and admitted that if the provisions of a statute are separate and distinct, and are not interdependent, the one upon the other, that the legal provisions will stand, the illegal fall, the good will be maintained and the bad will be rejected.

When you look to our Constitution for the right and power of the Legislature to act, you will see that it is limited to providing by law for the assembling of the Convention. When they have done that they have exhausted their whole power and there is nothing left for them to do; as to this matter they are "functus officio." No further provisions on this subject by the Legislature will legally bind any human being in the Commonwealth.

If the Legislature can direct the submission of the Constitution they can exercise any and all other duties of the Convention, and that body will become a mere commission to register the will of the General Assembly. No other power on earth, save that from which this Convention derived its authority, can direct the disposition to be made of the Constitution by this body—the sovereign people.

My attention has been called by my friend from Winchester to a point which I had previously carefully determined should not escape me. It is one that is very significant in its bearing on the question under discussion. With reference to the provision—

Mr. KENDALL: May I ask the gentleman if he thinks we have put anything into this Constitution which violates that proviso?

Mr. BOULDIN: No sir; we have not.

Mr. HARRISON: How about the military exemption and the capitation tax not applying to soldiers?

Mr. BOULDIN: That proviso, gentlemen, is a very significant part of the provision for amendment. The provision engrafts the only limitation that the former convention attempted to impose upon the power of the delegates to future conventions, and the proviso is as follows:

"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 conferred by the Constitution, except for causes which apply to all persons alike."

Now sir, this proviso goes a long way to show what the framers of the Constitution understood by the words, "revise and amend." The only limitation attempted to be placed upon the power of the conventions thereafter called in the manner prescribed by the Constitution was what? it was against making any revision or amendment that would impair the right of suffrage or any civil or political right conferred by the Constitution; not considering nor discussing nor proposing such revision or amendment, in no other respect did that body attempt to restrain future conventions, but left them the untrammelled right to exercise all the power that might be delegated to them by the people.

Had the convention intended to provide for the submission of future Constitutions to the people for ratification or rejection, they would have said so in plain words and not left so important a matter to be determined by the meaning of the words revise and amend.

I beg gentlemen to bear this proviso in mind when considering this important question of the extent of powers delegated by the words "revise" and "amend."

Not that the convention of 1869 had any power to place such restrictions on future conventions, for it had no such power, but for the purpose of throwing light on the intention and meaning of the convention in the case of these words.

As to whether we have not already violated this provision as suggested by the distinguished gentleman, from Richmond, by the adoption of the suffrage act, I understand that as far as the suffrage act is concerned, it was the intention of this body, that its provisions must apply equally to people of all races and all colors.

Mr. HARRISON: It doesn't say: "races." it says, "all classes."

Mr. THOM: The language is: "Except for causes which apply to all persons and classes."

Mr. BOULDIN: It may be in this latter that the suffrage article violates the proviso contained in the Constitution of 1869, but if so this body representing the people to-day had the right to adopt any suffrage article without reference to the provisions of the Constitution of 1869, for I suppose it would not be seriously contended by any one that the provisions of a former Constitution could bind the people assembled in convention to-day. That position I believe is held by no one.

I come now to further consideration of the main proposition—the theory of revision and amendment in the time of profound peace. As I understand the theory of this quasi-revolutionary and purely American doctrine of revision and amendment it is this: If the Constitution prescribes its own mode of amendment that mode must be pursued in all cases of amendment; if no method of amendment and provision is prescribed, the Legislature, as the body legally authorized to speak for the people, can submit any proposition of revision and amendment to the people for its action.

In either event the whole function of the constitutional provision on the legislative enactment is merely to ask and obtain the decision of the people on the question of convention or no convention; and when a convention is assembled under either process it derives its whole power from the vote of the people, and not the act of the Legislature or the ordinance of the convention. The whole scope, purpose, and object of the legislative act and the constitutional provision is to provide the means by which the people may legally express their views, as a body politic, and not enable the Legislature or the convention to control, in any particular, the rights and powers of the people in any future conventions assembled; I understand it, sir, to be acknowledged and recognized law that one General Assembly cannot bind another by any enactments except in cases of contracts controlled by the provisions of the Constitution of the United States. I also understand that one constitutional convention cannot control the subsequent action of any other convention, and that the whole extent to which this system of peaceable revolution, which has sprung up in recent days, goes, is that the people, acting in one instance under the provision of the Constitution, and in the other under a legislative enactment can determine the question of convention or no convention, and provide the means by which the delegates may be assembled in convention; and when once assembled, they as a convention exercise the delegated power of the people, the sovereign power of the people, quoad the purposes for which they were called together.

Let us look awhile to the precedents in Virginia on this subject. There was no constitutional provision for calling the Convention of 1829-'30. The previous Constitution was (1776) the work of revolution, and was proclaimed; nevertheless it was a lawful and binding Constitution, and was so declared by the general courts about seventeen years after its proclamation. The Legislature in 1829 was the only body legally authorized to give expression of the will of the people, and it called the Convention of 1829-'30.

Had there been in the Constitution of 1776 any provision for its own amendment, this provision would doubtless have been followed in 1829. But notwithstanding the fact that there was no other body legally authorized to express the voice of the people, except the Legislature, the power of that body to submit the question of revision and amendment was bitterly controverted in the Convention of 1829, John Randolph of Roanoke leading the assault.

The Convention of 1829 did not submit its work to the electorate by whom they were chosen, but to the new electorate created by it, thus practically proclaiming their Constitution with respect to the suffrage article—then, as now, the most important part of the Constitution. This power was exercised under a grant from the people, couched in these same words, "revise" and "amend." If the Convention possessed the power to proclaim the suffrage act, what hindered it from proclaiming the article with reference to the apportionment of representation as was asked in that body? Nay, more; if the Convention had the power to proclaim one article, why, I ask, could it not proclaim every article of the instrument? That Convention did what we claim it is our right to do—it proclaimed the most important article of its Constitution—the suffrage act. When that was done, the principle was acknowledged.

Mr. THOM: Does not my friend know that was done under the very terms of the act of 1829? Does he not know that the extended electorate was mentioned in the terms of the act of 1829?

Mr. BOULDIN: I know that there was not an advocate in the Convention of 1829—neither Thompson, nor Johnson, nor Mason—that ever claimed it was the purpose of the Legislature to decide the question to whom it should be submitted. I refer especially to Mr. Mason, who said that he was a member of the Senate when that act was passed, and that it did not enter the conception of that body that they were declaring to whom the Constitution should be submitted; but that they did mean to declare, and did declare, that in the event the Convention did not prescribe the electorate to which it should be submitted, it should go to the then existing electorate. That was the understanding of those great men who controlled that convention. The only difference between this Convention and that of 1829-'30, as to the power of amendment and revision, is, the one was called by the Legislature, when there was no constitutional provision for amendment, and the other was called under a constitutional provision.

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

Mr. BOULDIN: With pleasure.

Mr. WISE: You are referring to the action of the Convention of 1829-'30, and you are speaking about the speech of Mr. Mason. The resolution of Randolph, of Roanoke, was that the question of the ratification of the Constitution of the Convention of 1829-'30 should be submitted to the voters then existing under the Constitution.

Mr. BOULDIN: The voters who sent them to the Convention; yes, sir.

Mr. WISE: Mr. Thompson, of Amherst, and Mr. Chapman Johnson, of Augusta, both of them among the ablest of the members of this State, took the position that the Legislature had no right to provide for submission to any other people than those who were electors under the Constitution then existing; but they both took—

Mr. BOULDIN: That was Mr. Randolph's position.

Mr. WISE: That was Mr. Randolph's position. But both Johnson, of Augusta, and Thompson, of Amherst, contended that the people of Virginia, having elected the members of the Convention of 1829-'30 under the act of the Legislature, endorsed the act of the Legislature, and that the Convention of 1829-'30, assembled under the provisions of that act, and was bound by the provisions of the act under which they were assembled.

Mr. BOULDIN: Now, your question?

Mr. WISE: I simply wanted to change the statement you were making as to what Mr. Mason said. Mr. Mason was not the only man to speak on that question. Chief-Justice Marshall was asked to give his opinion on that subject. He did not give any opinion; but he voted in accordance with the declarations pronounced by Johnson, of Augusta, and Thompson, of Amherst.

Mr. BOULDIN: My friend is right when he says that Mr. Johnson and Judge Thompson did not claim that the Legislature had a right to prescribe the electorate to which the Constitution should be submitted, and he might have added that there was not one man in that Convention, so far as its records will show, who did assert such a claim. He is also correct in saying that they claimed that, by the subsequent act providing for an election of members, all the provisions of that act regulating the powers of the delegates, when they came into convention, were ratified by the people. It was on that point that the dissension sprung up. There was not a single man who claimed the inherent power of the Legislature, where the Constitution provided a different means, to override that of the Constitution. The claim for legislative power was based on the fact that there was no other legal mode of ascertaining the will of the people—no constitutional provision. The advocates of submission to-day are driven to the same position held in 1829 by those who favored submission to the enlarged electorate—to-wit: That the election of delegates by the people was a ratification by the people of all of the other provisions of the act providing for the election of delegates to the Convention. They forget that the conditions in 1901 are very different from those in 1829-'30. In 1829-'30 the Legislature had power to pass any act on the subject that it chose; in 1901 its powers are limited by the existing Constitution to providing by law for the assembling of the Convention.

But can there be any force in the argument that the election of delegates by the people was an adoption and ratification by them of all the provisions of the act, constitutional or otherwise?

The proposition seems to me to be remarkable indeed. The unconstitutional portions of the act were absolutely null and void.

To borrow the argument used in 1829, what else could the people do when the election day came? Were they not "se defendendo" compelled to elect their delegates to the Convention, or, as the alternative, allow a part only of the Commonwealth to frame the Constitution?

Suppose the people from the western part of the State sent their delegates and those from the eastern part did not, or vice versa, how could the people of the whole State secure protection? If it be true that an election held under a legislative act, partly legal and partly illegal, is an adoption and ratification by the people of the illegal portions of the act, then it would be in the power of the Legislature, after the people had determined to call a convention, to defeat their will by engrafting on the act for assembling the convention illegal or objectionable measures and thus compelling the people to accept these obnoxious provisions or drive them from the polls. Surely such results cannot legally follow the simple act of the voter of voting for his representative. I undertake to say that the people who went to the polls and elected delegates to this Convention had no idea whatever that they were not binding themselves to submission or proclamation; or that they were doing anything save sending their members to the Convention to exercise the powers conferred upon them. I believe there was a sentiment in Virginia at the time of the election which has always been largely held in the State, that a Constitutional Convention possessed unlimited powers, and that, so far as the practical understanding of the people is concerned, when they voted for their delegates, their belief was that they were sending people here clothed with the entire power of the State to do whatever they chose with respect to the work before them. It was generally believed the Convention represented the sovereign power of the State. The people of this State hold the doctrine announced by Mr. John Randolph Tucker, that the Convention when assembled is the incorporate representative of the real body politic, the sovereign people, and that their powers are unlimited. I do not think that modern authorities go to that extent; they are to the effect that the Convention exercises delegated powers, but sovereign for the purposes for which they were delegated, and that there rests upon the Convention the obligation to show the commission under which it acts and to demonstrate that it carries the power which we claim. That commission is, "to revise and to amend," which, in my judgment, means to enact and proclaim.

I come now to the convention of 1851. There can be no comfort gained by my friends who favor submission from the action. The act prescribing the power of the Convention and the manner of submitting the Constitution to the people was the initial step for the revision and amendment of the existing Constitution. The act required the Constitution, when framed, to be submitted to the people, who should be declared electors by the proposed Constitution, and the powers of the Convention were limited by the legislative act, or attempted to be limited to considering, discussing, and proposing a new Constitution, or alterations and amendments, to the existing Constitution. The section defining the powers of the Convention is as follows:

"The persons who shall be elected in pursuance of this act shall, on the second Monday in October next, meet and assemble at the Capitol, in the city of Richmond, in general Convention, to consider, discuss, and propose a new Constitution, or alterations and amendments to the existing Constitution."

Consequently the Constitution of 1851 was submitted to the people, and as in 1829-'30, the suffrage act was declared or proclaimed by referring the Constitution to its enlarged electorate. As late as 1851 there was no provision in our Constitution for peaceable amendment. But in the next Constitution, the Underwood Constitution, a provision was engrafted upon it for its own amendment. The provision was taken, I believe, from the New York Constitution, and was similar to that existing in almost all of the States of the Union. It was a provision which has the sanction of the Supreme Court of the United States, as being the proper method of giving expression to the voice of the people as to peaceable revision and amendment of their own Constitutions.

Now, Mr. President and gentlemen of the Convention, we come again to the consideration of the powers of the Convention. What are they? They are: To revise and amend. It is claimed that the power does not authorize the exercise of the power of proclaiming the Constitution—that the Legislature has stepped in between the people and the Convention, and placed restrictions and trammels upon the action of the people and required the Constitution to be submitted. This extraordinary claim is based on the alleged ground that the bill of rights retain in the people certain inherent rights that they cannot divest themselves of except through the act of the Legislature submitting to the people the question of changing their government. For this doctrine the Pennsylvania case of Wells vs. Bain is referred to, forgetful of the fact that that very case declares, in terms, that the only known means of revising and amending a constitution is by a provision contained in the instrument, or by legislative act, or by revolution, and that in Pennsylvania, at that time, there was a constitutional provision for calling a convention to revise and amend the Constitution, and that every line and syllable of that opinion is limited to a case where the Legislature exercised its power of amendment, there being no other provision for doing so. But in every case that I have been able to find on this subject, where there is a constitutional provision for amendment, it has always been held to be legal. If there be no such constitutional provision, the legislative enactment comes into effect.

And, as my friend from Richmond thinks that under the Pennsylvania case, revision and amendments of rights secured by the Bill of Rights can only be effected by authority of a legislative act, I beg to read the language of Judge Agnew on that point.

The Bill of Rights of Pennsylvania, as he so well stated, is almost identically the same as our own. There may, perhaps, be a little difference in phraseology, but not a particle in meaning. Referring to the rights secured in the Bill of Rights, the Judge says:

"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 frame of government."

"The first mode he mentions is that found in the Underwood Constitution. "The mode provided in the existing Constitution." The second, "A law, as the instrumental process of raising the body for revision and conveying to it the powers of the people." Third, "A revolution."

Mr. THOM: I merely wish to get the exact position of my friend on one subject, Mr. President. As I understand, he does not claim that this convention is identical with the people?

Mr. BOULDIN: I think they exercise delegated powers conferred by the people.

Mr. THOM: I was about to follow that with a further question. You admit that the powers of this convention are delegated powers, and that we are the mere agents of the people?

Mr. BOULDIN: That is my opinion, sir. But just there—

Mr. MEREDITH: What is the extent of the delegation? Is it not the supreme—

(CONCLUDED ON PAGE TEN.)