CHAPTER XIII.

THE AUGUST CONVENTION—PREPARING FOR DIVISION.

CASH IN HAND.

The day the Convention reassembled, the Intelligencer said:

The success of our new State government is beyond the most sanguine expectations of its warmest friends. Every day more and more demonstrates the wisdom that governed the councils of its reorganization. The news comes in constantly that people by counties and by communities, wherever our victorious arms have spread, are gladly rallying to its support and defense. Company after company, both in State and United States service, are being mustered in, and ere the summer is gone we shall see some ten thousand of the true and patriotic sons of Western Virginia in the field under the glorious flag of our country.

The editor comments on the financial success of the new government. The taxes paid were already beyond its needs; and the Federal government had just paid over in gold upwards of $40,000, due the State by the distribution of 1841 from sales of public lands, now worth in current funds some $44,000 to $45,000.

Yet these prosperous conditions were not very old. When the restoration had been completed by the Convention the treasury of the restored government was, of course,
empty. Governor Peirpoint and Mr. Van Winkle had been obliged to borrow from the Wheeling banks on their personal endorsement, and had in this way raised $10,000.

**COMMITTEE ON DIVISION.**

August 6th the Convention came together again, to resume the work before it. Immediately after prayer, Mr. West of Wetzel offered a resolution to raise a committee of one from each county to take into consideration the whole subject of a division of the State, as a basis for action by the Convention. The proposition was agreed to and later the committee appointed as follows:

- West, of Wetzel.
- Crawford, of Hancock.
- Nichols, of Brooke.
- Wilson, of Ohio.
- Johnson, of Tyler.
- Stuart of Doddridge.
- Williamson, of Pleasants.
- Douglas, of Ritchie.
- Van Winkle, of Wood.
- Flesher, of Jackson.
- Wetzel, of Mason.
- Brumfield, of Wayne.
- Kramer, of Monongalia.
- Miner, of Alexandria.
- Barnes, of Marion.
- Cather, of Taylor.
- Zinn, of Preston.
- Parsons, of Tucker.
- Crane, of Randolph.
- Meyers, of Barbour.
- Smith, of Upshur.
- Lightburn, of Lewis.
- Withers, of Gilmer.
- Davis, of Harrison.
- Graham, of Wirt.
- Slack, of Kanawha.
- Trout, of Hampshire.
- Hawxhurst, of Fairfax.
- Michael, of Hardy.
- Koonce, of Jefferson.

Questions like stay-law, confiscation of rebels' property, increased compensation for sheriffs and collectors, were raised and sent to the Committee on Business.

**FARNSWORTH REVERSES.**

In the second day's session, Mr. Farnsworth offered this:
Whereas, The late Legislature refused to give its consent for a division of the State or the formation of a new State; and, whereas, we deem it necessary, in compliance with the Constitution of the United States, to have such consent before the creation of a new State, therefore

Resolved, That we deem it unwise at this time for this Convention to take action for a division of the State, and that when it adjourns on Friday next it will adjourn sine die.

The resolution was laid on the table, on motion of Mr. West, by a vote of 39 to 25. Mr. Todd of Taylor renewed the resolution in substance except that instead of proposing an adjournment it declared it inexpedient to legislate, and had it referred.

Richmond "void."

The Business Committee, among other things, reported an ordinance, which was passed two days later, declaring the proceedings of the Richmond Convention a nullity, in these terms:

That all ordinances, acts, orders, resolutions and other proceedings of the Convention which assembled at Richmond on the 13th day of February last, being without the authority of the people of Virginia constitutionally given and in derogation of their rights, are hereby declared illegal, inoperative, null, void and without force and effect.

Carlile Anticipates Committee.

On the third day Mr. Carlile submitted resolutions to instruct the Business Committee to report an ordinance providing for the organization of a separate State embracing the following counties:

Jefferson, Berkeley, Morgan, Hampshire, Hardy, Barbour, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Gilmer, Hancock, Harrison, Jackson, Kanawha, Lewis, Marion, Marshall,
And another ordinance providing that any counties "lying contiguous to the boundaries proposed for the new State, and whose people shall express a desire to be admitted, shall form a part thereof;" and also instructing the committee to report "a constitution and form of government for the proposed State, to be submitted to the people thereof for ratification or rejection at the polls on the fourth Thursday of October next, and that at the same time the sense of said voters be taken upon the question of the formation of the said new State." Mr. Carlile said these resolutions were offered as a sort of test to ascertain the sentiment of the Convention.

WIDE OF THE MARK.

If the reader will for a moment consider how much it involves to frame an organic law for a State under ordinary conditions, and then how much more for such a State under the surrounding circumstances—about to cut loose not only from the parental household but from the old rules, laws, systems, traditions, down to the most fundamental bases, and evolve new ones on radically different lines, adapted to different ideas and needs—he will realize how wide of the mark was Mr. Carlile's proposition, that a mere committee should, in a few hours or days at most, prepare a constitution and form of government for such a State.

Mr. Stuart of Doddridge moved to lay the resolutions on the table. Mr. Carlile supported them in an elaborate
address. He thought the time had now come for action, and went over the grounds which prompt a separation under ordinary circumstances. But the existence of the struggle now in progress, he said, suggested additional reasons for prompt action. If the result of the war should be an agreement for a division of the country into two governments—a thing he did not expect, yet something that was always within the range of possibility—the territory of Western Virginia might come into controversy in the settlement, and it might make a difference in such a settlement whether it was a part of the Old Dominion or an independent State. He had recently advised delay until the Restored Government had been fully recognized. The admission of our Senators, he being one, had completed that recognition; and under the decision of the Supreme Court of the United States in the case familiarly known as Luther vs. Borden (the Rhode Island case,) that question was settled beyond possible controversy. He did not think the formation of this territory into an independent State could in any way embarrass the Federal government in its operations against the rebellion but would rather strengthen its hands. It rested with this Convention to initiate the movement, and that was all it could do. The Legislature, whose consent was necessary, would not reassemble until December. As to the refusal of the Legislature at its July session, they had no right—at least there was no occasion—to give their consent in advance of an application. No proper application could yet be made. There was nothing now to prevent this Convention taking the initiatory steps. Let us ascertain the sense of the people within the boundaries proposed, lay before
them the form of government you expect to extend over them, and if they desire it, their servants in the Legislature can give their consent. Mr. Carlile concluded his address in these words:

Under the incubus of a false political philosophy, we have here been digging, in an almost primitive state, from the bowels of the earth, the necessary means of support, while nature has filled us to overflowing with all the elements of wealth seeking nothing in the world but the hand of industry to develop them and bring them into active use. Borne down by an Eastern governmental majority, cut off from all connection or sympathy with a people with whom we have no commercial ties, we have endured the disastrous results that must ever flow from an unnatural connection. Cut the knot! Cut it now; apply the knife!

Mr. Stuart of Doddridge objected that under the proposition of Mr. Carlile the Committee on Division would be instructed to report a constitution and form of government. He held this body had no right or power to frame a constitution. That should emanate from the people who were to be governed by it. He was for referring this question to the people, and if they voted for a division he was agreed to it. But he had not been sent here for the purpose of dividing the State of Virginia or of making a constitution for a new State. The thing had never been mooted before his people. The Committee on Division had the general subject under consideration, and he objected to tying their hands by this special instruction. He moved to lay the resolutions on the table. The motion prevailed by 38 to 32.
DIVISION COMES FROM COMMITTEE.

On the 10th inst., Mr. West from the Committee on Division reported an ordinance to provide for a division of the State. For this no less than eight substitutes were subsequently offered. These were made the order for the following Tuesday and each day till disposed of.

A MONSTROUS BIRTH.

The committee's ordinance which had now come before the Convention was one that could not possibly accomplish what the title proposed. Just who or what purpose shaped it cannot be precisely known, or whether it was the result of honest effort to compromise and harmonize by an unwieldy committee, made up in an incongruous way, with a large majority of material in it entirely incapable of a clear and connected plan. Mr. West proposed to take in all the northern part of Virginia clear across to the Potomac south of Washington, with nothing but an imaginary boundary between that territory and the rest of Virginia, and at the other end, to run a sort of snout or tail clear down to the Tennessee line. He provided that the Virginia constitution, as modified by the ordinances of this Convention, should be adopted for the proposed State. He proposed to start his boundary on the Tennessee line so as to take in a part of Scott County, all of Russell; thence to run along the top of Clinch mountain "to the county lines of Giles County; thence with the county lines of Giles and Tazewell to the county line of Mercer." This description seems to be faulty, as the maps show Bland
County intervening between Tazewell and Giles. The description of the lines, which is by mountain ranges in some places, is obscure and it is difficult to reconcile it with the maps; but it appears to take in Highland, Pendleton, Hardy, Hampshire, Frederick, Loudon and Fairfax, the line running to the Potomac south of Alexandria. One merit of the scheme urged by Mr. West was that it embraced the grave of Washington. He thought that would commend it to the favor of Congress when the new State knocked for admittance. But it seemed to the writer then, and does yet, that a Congress possessed of common sense and ordinary artistic susceptibilities would have been shocked by such a territorial monstrosity. As for the Pater Patriae, if he could have looked down and have seen the part of his country in which he had once been specially interested carved and disfigured in the way Mr. West proposed, he must have turned over in his coffin by way of protest.

DEBATE ON DIVISION.

In the afternoon session, Mr. Barnes of Marion spoke against any division of the State. There had been no popular uprising or demand for such a measure. According to the spirit of the constitution, they ought to have the consent of the eastern as well as the western portion of the State, and that could not now be obtained. He doubted if Congress would admit a State on a merely technical consent. He thought it better not to make the trial now and fail but to wait for the ripe fruit to fall into our hands. The time had not yet come for it. He had no objection to an expression on the subject, but was not
willing the people should be distracted with such a question at this time.

Mr. Martin of Wetzel asked if a division could not be had now, when could they obtain it?

Mr. Barnes replied: When the Seccessionists are driven out of the State.

Mr. Martin said the Seccessionists being in revolution against the United States had made themselves aliens and no longer citizens of either Virginia or the United States. Seccession was unconstitutional. We have nothing to do with them, he said, as it regards our rights or interests in Western Virginia. For himself, he was for division even before the Richmond Convention was held, and his people had elected him on that issue. He was for a division not only on account of the recent wrongs but from long conviction. He spoke of the natural barriers and diversities dividing the West from the East. The people expected a division from this Convention and would be disappointed if the foundation for it were not laid. The people of Wetzel had instructed her members to go for immediate separation; that this Convention should prepare the work so as to ask the consent of the Legislature which meets in December; and having that, to apply to Congress for admission. As to embarrassing our friends in the East by this movement, nothing short of the power of the United States could crush out secession in Eastern Virginia. How could division in any way hamper the government in that work? But after they had obtained the consent of the Legislature, it would still remain with Congress to refuse or delay admission if there were any apprehension of such embarrassment.
Mr. Van Winkle moved to strike out "New Virginia" from the ordinance and substitute "Allegheny," and this was agreed to.

Mr. Farnsworth's substitute came up for consideration next morning. It started the line of division at the Kentucky line on the Tug Fork of Sandy River, where Logan and Buchanan Counties join the river, and ran so as to include Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Pendleton, Hardy, Hampshire, Morgan, Berkeley and Jefferson.

Mr. Boreman of Tyler offered by way of substitute a paper consisting of preamble and resolutions, taking the ground that it would be premature and unfair to those parts of the State not represented here to authorize the formation of a new State, and recommending that the Legislature, "providing the people within the proposed boundaries shall be freed from their present embarrassments and the state of affairs in the country will then admit of a full and free expression of the popular sentiment," provide for taking a vote within the boundaries on the question of division on the first Thursday of January ensuing. These resolutions had apparently been drawn by Mr. Van Winkle, who followed them with an elaborate argument against any present attempt at division. He spoke two hours and the Intelligencer pronounced his speech "a masterly effort, cogent, logical and comprehensive; the very strongest that has yet been made, or we believe can be, against a division of the State." No synopsis of the speech was printed because it was the intention to print it in full and as a result of its great
length it was not printed at all. Mr. Van Winkle, however, did not take ground against division per se, but against the expediency of it at that time. He was replied to by Mr. Crane, who, while a fervid orator, with the gift of real eloquence, could not put his arguments into the compact shape given his by Mr. Van Winkle.

ATTORNEY GENERAL BATES LENDS A HAND.

In the next day's session, Mr. Ritchie of Marion, spoke against division. He held that it would violate the spirit if not the letter of the constitution and cited the clause in reference to the formation of new States. The consent of the whole State must be had, not that of one-third or one-fourth; it would embarrass the action of the general government in its efforts to put down the rebellion; the slavery question must come up in the formation of the constitution, and this would create controversy in Congress and among our own people. The present State government, he said, would be abrogated and the people of a portion of the State left without any government. He desired a division of the State at the right time, but entered his protest against attempting it now. He presented a letter from Hon. Edward Bates, Attorney General of the United States, expressing the opinion that:

The formation of a new State out of Western Virginia is an original act of revolution. I do not deny the power of revolution. I do not call it a right, for it is never prescribed; it exists in force only and has and can have no law but the will of the revolutionists. Any attempt to carry it out involves a plain breach of both the Constitutions of Virginia and of the Nation. And hence it is plain that you cannot take that course
without weakening if not destroying your claims upon the sympathy and support of the general government and without disconcerting the plan adopted by Virginia and the general government for the reorganization of the revolted States and the restoration of the integrity of the Union.

This letter shows that when it was written Mr. Bates had not studied—at least had not understood—the question he disposed of in this summary way. Before the date of the letter, the executive branch of the United States government—whose legal adviser Mr. Bates was supposed to be—and likewise both houses of Congress, had recognized the procedure which furnished the basis for the formation of a new State as entirely within the requirements of the Federal Constitution and of the State constitution. The Legislature had been recognized as the legislature competent to give its "consent," so that no "original act of revolution" was now possible. The later event proved that the United States, so far from being embarrassed by the erection of West Virginia, was actually strengthened, for the military organization under the new State was stronger than before. The restored government was not "abrogated," as Mr. Ritchie had apprehended, but removed to a part of Virginia beyond the lines of West Virginia when the authority of the latter was established. The plan of reconstruction which was prematurely disturbing Mr. Bates was not the present exigency he thought it. Only one great battle had been fought, and that had been disastrous to the Union arms. It was hardly time for the administration at Washington, or for restored Virginia, to be laying plans for reconstruction. When reconstruction came around five or
six years later, even Mr. Bates could not have shown how West Virginia was in the way of it. Three months earlier, in a letter to John Minor Botts of Virginia, Mr. Bates had declared that if Virginia should "dismember the Nation, she herself would be dismembered." He repeated this and to emphasize it said: "Now mark my prophecy: Unless Virginia by a rapid revolution redeem herself from the gulf that lies open just before her, she will be degraded, impoverished and dismembered." So she was. Mr. Bates was a better prophet than lawyer!

SMITH'S "LEGAL FICTION."

Fontaine Smith of Marion followed the reading of Mr. Bates' letter on the same side of the question. He began by showing the natural reasons demanding a separation, but contended there were insuperable difficulties at present. One was that the intention of the Constitution of the United States could not be complied with. The full consent of the State was necessary, and this could not now be obtained. The larger part of the State was in duress, and it would be wrong to take advantage of what he described as "a legal fiction" to obtain a division now in opposition to the wishes of the eastern part of the State, which was as much interested as the West and had an equal right to be heard. "Having now assumed to be the State of Virginia," he said, "we are, of course, responsible for the entire State debt." If they divided the State and abdicated all the government of Virginia, it would be running counter to the interest of those who held the State bonds and their opposition would have to be encountered. His own position was taken boldly that a division could
be obtained only by consent of all of Virginia, eastern and middle as well as western. * * * When the rebellion should have been driven out of the rest of the State, the power of the government would be in the hands of a different class of men in that part of the State from what it was now—poor men, whose interests would be identical with our own, friendly to us, who, if we then desired it, would give their consent to a separation. He looked upon the question of slavery as a matter of climate and soil. Men would be governed by their interests. If the question were agitated now while the present party was in power, the application for admission would be rejected. His plan was to adopt the present State constitution, with necessary modifications, and hold an election in October to get a popular expression.

In the afternoon Mr. Paxton addressed the Convention. He admitted nothing should be done which would really embarrass the government. It could not be denied that the greater part of the loyal people of Western Virginia were represented here. They had long been oppressed by the remainder of the State, and even their warning when the ordinance of secession was passed, that the people would not submit, was treated with contempt. Our best interests demand the separation. This being true, now that the constitutional difficulty had disappeared, why not initiate steps for a division? The only substantial objection was that it would embarrass the government. He could not see how. They were now entirely dependent on the government and even if all other steps had been completed, they would avail nothing without the consent of Congress. The government thus held
the final control; and, therefore, how could the preliminary steps embarrass it? If the State was ever to be divided, it must be begun sometime, by somebody. It would not divide itself. He believed Congress would in good time sanction any proper division, and that the Convention ought not to adjourn without taking some step to meet the expectations of the people.

Mr. Lewis of Harrison followed in a somewhat rambling speech in favor of division. In the course of his remarks he said this Convention had been convened for the express purpose of a division of the State, and he read letters from citizens of the interior urging some measures looking to that end—one from Hon. Wm. G. Brown, who told him now was the time.

Mr. Smith of Marion offering to read a letter from Attorney General Bates, was reminded that the letter had already been read. Mr. Carlile remarked that there was “another letter from Mr. Bates now in the possession of the Secretary in which he took very different grounds from those taken in the letter read;” and if the Attorney General was to be dragged in here to influence the action of the Convention, he should insist on having him “presented in both phases.” Mr. Bates might be good authority “but he was not their constituents.”

GOVERNOR POLSLEY SEES A NEW LIGHT.

The succeeding morning, Governor Polsley spoke against division. He argued the specific object for which this body had assembled, as shown in the second address issued by the Central Committee, was the reorganization
of the State government. Not only so, but such was the understanding and such substantially our own declaration in the June session, having then unanimously declared that it was imprudent and inexpedient to undertake a division of the State. They should limit themselves to their legitimate powers. They would be even more despotic than the Richmond Convention if they proceeded now to effect a division before a free expression of opinion could be had. It was impossible for even one-fourth of the counties included in the boundaries to give an expression upon the proposition. He desired earnestly that this commonwealth might be divided as early as possible, but he feared a false step now would defeat that object. As for the danger in the event of a compromise with the rebellion, he had never permitted himself to believe such a result possible.

Mr. Hubbard of Ohio followed Mr. Polsley and concurred in his contention that this Convention was not inaugurated for the purpose of dividing the State, but for the reorganization of a government for the whole State and the support of the general government in putting down the rebellion. He referred to the tabling by a vote of 50 to 17 of Mr. Farnsworth's resolution to declare that the object in reorganizing the State government was to obtain a division of the State. His objection to action now in the direction of division was that it would embarrass the government in putting down the rebellion. If the regular State government now in operation were destroyed, how could the remainder of the State ever be restored to the Union? The President of the United States had said
this movement here was worth more to the government than an army with banners.

Mr. Carlile said if he could be convinced that the action they proposed would embarrass the Federal government in the slightest degree in its efforts to maintain the Union, he would join in voting the proposition down. But how embarrass? Did the Ohio River which divides us from Ohio embarrass the administration? The idea that imaginary lines defining the boundaries of States crushes the power of the government to maintain and protect itself was baseless. We cannot ourselves divide the State. We simply propose that the people within a certain boundary may be permitted to declare their wishes on the subject. How will this embarrass the government in its military operations? Would some gentleman be kind enough to point out how?

Mr. Hubbard asked how was Eastern Virginia to be restored to the Union if the State were divided?

"Who" asked Mr. Carlile, "restored Northwestern Virginia to the Union? The loyal people of Northwestern Virginia. The loyal people of Eastern Virginia will have to restore the East. That is the way every seceded State in the Union is to be restored. But the passage of this proposition will not defeat that object, nor render us less powerful than now. Nor do I expect we will have here assembled representatives from all Virginia. Does the gentleman from Mason think if we wait until there is a full representation here from every county in the State a separation will ever be obtained? As to the unkindness of taking advantage of our eastern brethren, how much they consulted our interests in what they have been doing! It was well understood Mr. Farnsworth's resolution was tabled because the time for a manifesto was especially inopportune. The Legislature had not met, had not elected senators, and the
senators had not been admitted. In a word, we had no Legisla-

ture at that time qualified to give the requisite consent. I my-
self opposed the resolution and said that as soon as could be after
we had such a Legislature, I would be foremost among those
who sought the division of the State. Interest is the base of all
political action, and if we believe our interest requires this
separation, we are justified in the eyes of the world. As

to the matter of embarrassing the government, it could not
possibly do so up to the point of our application to Congress.
Then the decision of that very question will rest with Congress,
and they may admit us or ask us to wait for a more auspicious
time.

Mr. Carlile added that their action in that direction
could not affect the government at Wheeling.

Mr. Van Winkle remarked that they "would bring it
into contempt."

"Sir," replied Mr. Carlile, "you cannot bring a gov-
ernment into contempt while my friend from Wood is a
member of it."

Touching the financial aspects of the question, Mr.
Carlile said that whenever a settlement should be made
between this portion of the State and the residue and a
correct balance struck, it would be in our favor.

Mr. Smith of Marion asked how the settlement was to
be made?

"That, sir," replied Mr. Carlile, "is to be left to your-
self and other eminent gentlemen in the future legislative
assemblies of Virginia to determine."

There was no reason in morals or in law, Mr. Carlile
argued, why we should not avail ourselves of this oppor-
tunity. There had never been a time before in his judg-
ment when it could have been accomplished peacefully,
legally, constitutionally. So far from embarrassing the
operations of the government, it would in a military way strengthen its hands. With a separate existence they could give the government a better support than now, embarrassed as they were at every step by the innumerable burdens weighing upon them so long as they remained a part of Virginia. As representatives professing obedience to the will of their people, it was as little as they could do to give them an opportunity to be heard at the ballot-box on this subject. That was all that was proposed, all they would be pledged to by any action taken here.

Mr. Stuart of Doddridge wanted it distinctly understood that he was in favor of a division of the State, and he had believed and urged it should take place at the time of the constitutional convention of 1850-51.

But, he said, we are here reorganizing our government interests. Everything sinks into insignificance in comparison with maintaining the Union. If action here was likely to endanger the cause of the Union, they should hesitate. He quoted the constitutional provision in regard to the formation of new States. It was contrary to all ideas of justice to suppose it meant that two-thirds of a State could cut loose from the rest by an arbitrary majority. If two-thirds could not, how could one-fourth force a division without the consent of the remainder?

FARNSWORTH IN LINE AGAIN.

Mr. Farnsworth followed. He charged upon a portion of those opposing immediate action that they were opposed to the formation of a new State altogether. Two of the members had told him they were, and they were
found acting with the gentlemen who professed to be in favor of division but were now opposing what they were pleased to call precipitate action. The argument of the gentleman from Wood was that one of the great objects was to get into position to legally and constitutionally take these steps. If they were not in such position now, they never would be. He recapitulated the different steps that had been taken to make this a legitimate government. They were not to be prejudiced, he claimed, by the rebellion in Eastern Virginia. They were not responsible for that; and they were not to suffer because the rebels there had done wrong. He took the ground that the government could not refuse them admission as a new State if the application were properly made. It was a right they had under their State constitution and under the Constitution of the United States, with assent of their legislature, to demand admission. The argument that if they should be formed into a new State they could not be loyal to the United States was the weakest he had ever heard; and if the success of the general government depended on denying the rights of the people of Western Virginia, then its success hung on a very brittle thread. But the government was high above such a position. She was contending for Constitutional liberty and we with her contending for the same. It was taking no advantage of the East. They had refused to join us, and should we suffer because of their refusal? There was a settlement to be made with Eastern Virginia, but the separation would not aggravate the case in the least. As to the boundary, he would like to have the line run with the mountains, but at this time perhaps that boundary could not be had.
Only give us a State composed of such counties as named in his proposition and it would vie with any other State in the Union. He was opposed to taking in any counties at this time that would have to be coerced into measures.

MR. LAMB IS AGAINST IT.

Mr. Lamb followed at some length. He declared at the outset that he was "for a separation of this State when it can be done at the proper time and in a proper manner." He would like to have the line of the Blue Ridge if it was to be had; if not, the line of the Alleghenies as far south at least as the Kanawha. He thought it essential we should have a boundary capable of military defense to make our position a respectable one in the family of States. He recited what the west had suffered from the misrule of the east, and added that our social habits were different and our commercial relations were not with them. Every consideration which could be addressed to the wisdom of a statesman demands a separation; but it should be when we can command a suitable boundary and when a full and free expression of opinion can be had throughout the limits of the new State. These conditions could not be complied with now; and in the heat with which members now pressed the measure, he saw nothing but what presaged misfortune for Northwestern Virginia. It was not sixty days since the present government was inaugurated, and they were already seeking to overthrow all that had been then done. This disposition to be continually changing great fundamental institutions could lead to nothing but misfortune. They
were proceeding more rapidly than the zealots of the French revolution. Why this haste? They were no longer subject to the control of the East, though in two ways they might again become so. One was in event the United States should be unable to maintain itself and defend them. The other in case the territory of the State was repossessed by the Union arms and resumed its place under this restored government. But there would be plenty of opportunities to bring up the question of separation before all Eastern Virginia was represented. The progress of the armies would be gradual; they would be able to foresee when the East would come in and act accordingly.

But suppose, he said, a new State were formed within the boundaries proposed? As a matter of course the present government, which has been acknowledged by the Executive of the United States and by Congress is superceded; because from the time this Convention announces that another government is to be formed, who will obey or regard the present government? Then if the armies of the United States are to succeed in Eastern Virginia, to carry out the plan of the administration a new State government is to be formed there. As Secessionism is put down in district after district of the State, the counties of Eastern Virginia are to be furnished again with a constitutional nucleus. This restored government is out of the way. What sort of a government will be formed in the east? Necessarily a government to represent the State of Virginia. Your new State will yet be antagonized. Neither Congress nor the Executive can act in reference to it; for carrying out the great plan in bringing back the State of Virginia into the Union, they must, as expressed in the letter of the Attorney-General, have "a constitutional nucleus" around which the shattered elements of the Union throughout the State can rally. Another State government for the east would then be a necessary result. As the arms of the United States prevail, this government will extend
Itself over the whole east. It will be a government which the United States will recognize, and will be the legal government of the State of Virginia. Then you have superseded your old government, which the United States has recognized as the legal government of the State, and your new (State) government has no such claims, for it is nothing in fact or in law until recognized by the Government of the United States. What respect will the new government in the eastern part of the State then pay to your ordinances or to the lines marked out for a new State? The State of Virginia will have again that very control over you of which you have so much and so justly complained. I see in the measure which you propose to us quite as much cause for apprehension that Eastern Virginia may again extend her dominion over us.

This argument lacks Mr. Lamb's characteristic soundness and sagacity. The mistaken assumption that the restored State government would go out of existence when the new State came in leads him into a maze of weakness and confusion quite foreign to Mr. Lamb's usual strength and correctness. Mr. Ritchie fell into the same error, that the restored government would be "abrogated." So far from it, that would be impossible; having the official recognition of the Executive and both houses of Congress, and the action of Congress being conclusive that it thereby became the legal, legitimate, constitutional government of the State, with senators and representatives in Congress, it had become a political impossibility for it to be "abrogated." If there should not be a foot of territory over which the restored government could assert its authority till recovered by arms, it must none the less remain a political entity so long as the Federal government continued, representing loyal Virginia then wholly in duress.
The United States could not recognize another government in place of it. If confutation were necessary we have it in the event. Governor Peirpoint’s authority did not cease—was not impaired in the least—when the new State came in save as to the territory thus withdrawn from his jurisdiction. The restored government remained undiminished over the remainder of the Commonwealth. Governor Peirpoint removed the archives to Alexandria, and two years later, when the duress had been removed by Appomattox, the restored government was established as the rightful government of Virginia in the ancient capital on the James.

GOVERNMENT NOT "PROVISIONAL."

In answer to some objections that had been made by Mr. Lewis of Harrison to the manner of organizing what he referred to as a "provisional government," Mr. Lamb took some pains to explain that the restored government was not a provisional government.

When this Convention met in June, said Mr. Lamb, it was impossible to have throughout the counties of Northwestern Virginia an election for Governor. The Convention from imperative necessity were obliged to assume the responsibility of electing a Governor themselves. That far we interfered with the rights of popular sovereignty; but we trusted to our constituents to excuse us for that interference on account of the necessities, the difficulties, the vast embarrassments with which we were surrounded. They unanimously approved of our course. Throughout the whole length and breadth of this land, our action in June has been approved—approved by the Government of the United States, approved by the loyal men of the loyal States everywhere. We were fully justified in doing it. But having elected a Governor in this irregular and—except so far as it was justified by the circumstances—unjustifiable
mode, we prescribed six months for his term of office. Yet we went on here to enact as follows: The General Assembly to provide by law for the election of Governor and Lieutenant-Governor by the people as soon as in their judgment such election could be properly held. The office of Governor under the reorganized government was not to terminate at the end of six months, at least according to the ordinance for the reorganization of that government. An express provision is made for its continuance in a regular manner by popular election when the Legislature think such an election can be held. The Convention did not recommend this to the Legislature. They required it. The provision in regard to members of the Legislature is that "they shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected." The members of the House of Delegates under this system hold until 1863 and a portion of the senators until 1865. When the terms of those officers expire, if this system is to be continued, their successors will be elected in the regular way. In no proper sense of the term, therefore, is this merely a "provisional government," for a provisional government, I take it, is a government which fixes in the very charter of its creation a period beyond which it is not to continue.

Mr. Lamb recited the facts to show that the call for this Convention had been addressed to the whole State. In concluding his remarks he said:

I fear if you press this measure upon us, as you seem determined, that its only result will be woe to you and me and mine; but if the measure carries, I shall join heartily, fairly and honestly in carrying out your determination. My fate will be yours; and I can only hope that whether weal or woe come of it, I may still be able in any event to protect those who are dependent on me.

A FAMILY JAR.

The next day (Saturday), the 17th, was spent over the several substitutes for the committee's ordinance. Mr. Carlile offered, in the way of compromise as he said, to
embrace only the territory proposed in Mr. Farnsworth’s substitute and then make it the duty of the Legislature at its next session to provide for submitting the question of division at an early day to the territory so embraced. Late in the day, Mr. Stuart of Doddridge moved, as an amendment to Mr. Carlile’s proposition, to substitute the territory included by the committee’s original ordinance—from the Tennessee line to the tomb of Washington. In the discussion of this, Mr. Carlile, having exhausted his privilege, rose to speak when several members objected. Mr. Carlile became emphatic and said, amid great confusion, that if after the offer he had made to meet the other side on a compromise this course were to be pursued by them, he would take it all back, and if they “would and must have war,” they should have it. Some member cried: “And war it shall be!” Another: “We will meet you!” The vote on Stuart’s amendment was taken, and it was carried by one majority.

Mr. Farnsworth remarked that they now had “no further business here,” and he moved to adjourn sine die. Several members cried: “Yes, let us adjourn and go home!”

The sine die motion was not seconded, and the Convention adjourned in disorder.

RECONCILIATION AND PROGRESS.

Monday morning the Convention came together in calmer temper. Mr. Hooton of Preston brought forward a proposition to appoint a committee of six, with instructions to bring in a measure on the subject of division that
should, if possible, harmonize the conflicting views of the Convention. This proposition was the beginning of wisdom. It was agreed to; and later in the day a committee, representing both sides about equally, was appointed as follows: Farnsworth, Carlile, Paxton, Van Winkle, Ruffner and Lamb. This was a wieldy and excellent committee, capable of preparing a measure which would be workable in details.

THE COMMITTEE REPORTS.

Next morning Mr. Farnsworth, chairman of the committee, brought in "An Ordinance to provide for the formation of a new State out of a portion of the territory of
this State." The first section included unconditionally the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour; Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke and Hancock (39); and provided that the State should be called "Kanawha." It provided for an election within these boundaries on the question of division, to be held October 24th, delegates to be chosen at the same time to frame a constitution if division should carry. At the same date the people in Greenbrier, Pocahontas, Hardy, Hampshire, Morgan, Berkeley and Jefferson were to be allowed to vote for or against being included; and if their vote should be for, the constitutional convention was authorized to so alter the boundaries as to include these counties.

It was apparent that the ordinance had been drawn by Mr. Lamb or Mr. Van Winkle, or between them. The careful and systematic arrangement of its provisions showed their hand. While both were against such action at the time, evidently both had deemed it best to give the Divisionists a fair opportunity to submit their question to the people. Mr. Van Winkle was in some degree won over by an agreement for a constitutional convention; and the name "Kanawha" was a concession to him as well as to Mr. Ruffner. Mr. Lamb having put his hand to the plow, did his best to prepare a measure capable of being carried out. Without the co-operation of Lamb and Van Winkle, it is more than doubtful if any in the Convention
could have prepared an ordinance which would have accomplished—at least without a good deal of friction—what the new State men sought. It had been demonstrated that, with all his talents, Mr. Carlile was not the man to do it.

VAN WINKLE SUPPORTS.

After the reading of the ordinance, Mr. Van Winkle remarked that the questions involved were those of time and boundary. They had conceded, he said, to the gentlemen on the other side an opportunity of bringing this matter before the Legislature at its next session in consideration, in part, of the fact that if the Legislature should hold only its regular session it would not meet again until two years after December next. He considered that some concessions had been made to his side of the question in providing for a convention to frame a constitution. There were serious objections to going on with the old constitution and organizing a new State under its provisions and in a few months having to make another constitution. The constitution to be framed by the Convention would be submitted to the people. In reference to the boundary, he had been strongly disposed to include the Valley, but had somewhat changed his opinion. One ground for the change was that it would be taking too much from the old State; another that the Valley itself would not consent—at least no other part of the Valley than the counties provided for in the ordinance. The ordinance had been made up from the different propositions offered and was the result of a sincere desire on the part of the committee to present something which would meet the approbation of
the Convention and the people generally. The great con­
cession on his side was in conceding early action, to refuse
which would perhaps have been fatal to the whole thing.

POLSLEY AGAINST.

Mr. Polsley opposed the committee's report. His real
objection was that the Convention had no power to act
on this subject; that "although we are de jure—we are,
in fact, the rightful government of the whole State of Vir­
ginia, according to the principles of American government
and according to the principles recognized by the govern­
ment of the United States—yet we are not de facto the
government of the whole State of Virginia." For this
reason he could not feel they had any right to adopt meas­
ures for a separation of the State. Mr. Polsley, it may
be recalled, was one of those who, in the May Convention,
were ready for the most radical measures. He was in full
sympathy with Mr. Carlile in his wish to effect an imme­
diate separation, and was not frightened when told by Mr.
Willey that such a course would be "triple treason." Now
he had swung around to the other extreme.

MR. LAMB COMES AROUND.

Mr. Lamb supported the committee's report. He would
remind his friends that by the Constitution of the United
States no action of the people of Virginia could effect any­
thing without the consent of the Legislature towards the
formation of a new State, and that consent must be free
and untrammeled. This was one security against division.
Another was that another convention was to be held to
prepare and submit a constitution to the people of the new State. If that convention should find the state of things would not allow the subject to be fairly and freely acted upon, they certainly would postpone the matter until such expression could be had. He thought they had a reasonable security that no action would be had unless an actual and fair expression of popular sentiment should be previously secured.

Mr. Tarr proposed to amend the ordinance so as to include Hampshire, Hardy, Morgan, Berkeley and Jefferson without conditions. Mr. Stuart of Doddridge moved to include also Pendleton and Highland. Mr. Burdett remarked that some idea of the strength of the Union sentiment in Highland could be formed from the fact that the first troops to invade Northwestern Virginia were from Highland County. They had been quartered in his town and in his own house. Among them was one Captain Hull, who in the Richmond Convention had been a Union man, but who had finally yielded to the pressure.

A QUESTION OF TRANSPORTATION.

Mr. Stuart inquired if there had not been a company of Secession troops in Taylor County before these came in from Highland?

Mr. Burdett replied that might be true; but he had only alluded to the fact to show how strong was the Union sentiment in Highland. He supposed the gentleman from Doddridge had perhaps some relatives over there, and he "believed it would be cheaper for him to go over to them than to try to bring the country to us."
Mr. Stuart's amendment was lost, and Mr. Tarr's motion agreed to by 35 to 27.

THE FAT IN THE FIRE.

Mr. Carlile took the floor and said that by the action just taken the ordinance had been destroyed. The provision in the ordinance was to allow these counties to come in if they desired, not to force them in against their wish. One object was to get rid of the Secession forces. He believed Eastern Virginia was willing to let Northwestern Virginia go and form a separate State; but would they be willing without a fierce struggle to let go these counties containing some eight thousand slaves and which were within their natural boundaries? There was no assurance that these counties want to come to us at all. As to wanting them because the Baltimore & Ohio Railroad runs through them, in times of peace we have free and unmolested use of the road and in times of war it depended on who had military possession of it.

Mr. Caldwell of Marshall, interrupting, moved a reconsideration of the vote adopting Mr. Tarr's motion.

Mr. Nichols followed in an appeal to members not to again throw the element of discord into the Convention by mutilating the compromise work of the committee. They all knew he had opposed immediate action; but the committee had harmonized on a measure, and members should not captiously oppose the results attained by the committee, distract the Convention and ruin everything.

Mr. Hall of Marion occupied some time in vindicating the Union sentiment of Richmond and Eastern Virginia. He favored taking in the counties included by
Mr. Tarr's amendment. He was opposed to being in a hurry. They should not hasten too much towards a division of the State.

Mr. Van Winkle remarked that if those counties were left as the committee had proposed them, they could vote themselves in if they chose; but if a county should so vote while an intervening county voted the other way, of course it could not come in. The leaving out of these counties and others from the absolute boundary and thus making provision whereby they might come in if they wished, had been the very essence of the compromise which had been effected.

ALL SAFE AGAIN. DIVISION VOTED.

Mr. Caldwell's motion to reconsider prevailed by a vote of 43 to 27; and in the afternoon Mr. Tarr's motion was lost by a vote of 31 to 48.

Mr. Burley moved to include without conditions Hardy, Hampshire and Morgan, but the motion was lost.

Mr. Smith of Marion opposed the report of the committee, on the ground that it would bring up prominently the question of slavery—"which must result most disastrously."

Mr. Stuart of Doddridge moved to strike out "Kanawha" as the name of the State and substitute "West Virginia." The motion was rejected without discussion.

The ordinance was then put upon its passage and adopted by the following vote:

Yeas—Berkshire, Brown, Burdett, Brumfield, Cather, Crawford, Carlile, Crane of Preston, Crane of Randolph, Caldwell, Copley, Davidson, Douglas, Downey, Davis, Evans, Ferrell,

Nays—Boreman (President), Atkinson, Boreman of Tyler, Barnes, Bowyer, Burley, Broski, Crothers, Close, Carskadon, Gist, Graham, Harrison, Hubbard, Hall of Marion, Hawxhurst, Johnson, Koonce, Mason, Montague, Nichols, Polsley, Ritchie, Stuart, Tarr, Trout, Wetzel, Watson—28.

Following are the first three sections of the ordinance as adopted:

DIVISION ORDINANCE.

Whereas, It is represented to be the desire of the people inhabiting the counties hereinafter mentioned to be separated from this Commonwealth and to be erected into a separate State and admitted into the Union of States and become a member of the Government of the United States:

The people of Virginia, by their delegates assembled in Convention at Wheeling, do ordain that a new State, to be called the State of Kanawha, be formed and erected out of the territory included within the following described boundary: Beginning on the Tug Fork of Sandy River, on the Kentucky line where the counties of Buchanan and Logan join the same, and running thence with the dividing lines of said counties and the dividing line of these counties and McDowell to the Mercer County line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh county line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton, to the southwest corner of Hardy County; thence with the dividing line of the counties of Hardy and Tucker, to the Fairfax Stone; thence with the line dividing the States of Maryland and Virginia, to the Pennsylvania line; thence with the line dividing the States of Pennsylvania and Virginia, to the Ohio River; thence down said river, and including the same, to the dividing line between Vir-
Virginia and Kentucky, and with the said line to the beginning: including within the boundaries of the proposed new State the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke and Hancock.

2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new State as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a constitution for the government of the proposed State.

3. The Convention hereinbefore provided for may change the boundaries described in the first section of this ordinance so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries or to the counties named in this section, if the counties to be added, or either of them, by a majority of the votes given shall declare their wish to form part of the proposed State, and shall elect delegates to the said convention at elections to be held at the time and in the manner herein provided for.

Sections 4 and 5 provided the detail for holding and certifying the election; Section 6 for the proclamation of the result by the Governor and calling together the constitutional convention on the 26th of November, in event division should have carried. Section 7 prescribed the representation in such Convention; and Section 8 required the Governor to lay before the General Assembly at its next meeting the result of the election, "for their consent
according to the Constitution of the United States, if it shall be found that a majority of the votes cast be in favor of a new State and also in favor of the constitution proposed to said voters for their adoption.”

The 9th section, relating to the Virginia debt, containing also a clause to protect non-resident owners of land against tax discrimination, was as follows:

9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State and shall be determined by the laws now existing in the State of Virginia. The lands within the proposed State of non-resident proprietors shall not in any case be taxed higher than the lands of residents therein. No grants of lands or land warrants issued by the proposed State shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last, which shall be located on lands within the proposed State now liable thereto.

Section 10 provided for certifying to Congress consent when given; and the 11th and last, that the authority of the Reorganized State should remain unimpaired over the boundaries of the new until the latter had been fully admitted.

The adoption of this ordinance completed the most important work of the Convention. Ordinances were adopted “ascertaining and declaring in what cases offices are
vacated under the declaration of June 17, 1861;" "providing for the appointment of collectors of the public revenue in certain cases;" "providing for the election of representatives in the Congress of the United States;" "increasing the compensation of the Adjutant General during the continuance of hostilities."

Resolutions offered by Mr. Van Winkle were adopted urging upon their fellow-citizens "the importance of extending to the reorganized government a cordial recognition and support in its efforts to establish civil authority and to cause the law to be administered and maintain peace and good order throughout its jurisdiction;" also the duty of "encouraging by their countenance active co-operation in the enrollment and drilling of at least one company of State volunteers in every county for the purpose of suppressing rebellion and insurrection and aiding the civil authorities in the enforcement of the laws."

The adjournment of the Convention was "until called together by the President of this Convention or the Governor; and if not so convened on or before the first Thursday of January next," it should stand adjourned sine die.

PRESIDENT BOREMAN SUBMITS.

Before announcing the final adjournment, President Boreman said:

You have taken the initiative in the creation and organization of a new State. This is a step of vital importance. I hope and pray God it may be successful; that it may not engender strife in our midst nor bring upon us difficulties from abroad; but that its most ardent advocates may realize their fondest hopes of its complete success. So far as I am personally concerned, I bow with submission to what you have done on this subject.