CHAPTER XV.

FRAMING THE ORGANIC LAW—ITS ADOPTION BY THE PEOPLE—LEGISLATIVE CONSENT.

THE CONVENTION MEETS.

The delegates chosen to frame a constitution for the proposed new State of Kanawha met in the United States court-room, in the Federal building, in the city of Wheeling at 11 a.m. November 26, 1861. Chapman J. Stuart of Doddridge County called the body to order, and on his motion the venerable John Hall, of Mason, was made temporary chairman and Gibson L. Cranmer, of Wheeling, temporary secretary. Delegates from thirty-one counties answered roll-call. The following were later found to be entitled to seats:

Cabell—Granville Parker.
Braxton—Gustavus F. Taylor.
Boone—Robert Hagar.
Brooke—James Hervey.
Clay—Benjamin Stephenson.
Doddridge—Chapman J. Stuart.
Gilmer—William Warder.
Hardy—Abijah Dolly.
Hancock—Joseph S. Pomeroy.
Harrison—Thomas W. Harrison and John M. Powell.
Jackson—E. S. Mahon.
Kanawha—James H. Brown and Lewis Ruffner.
Lewis—Robert Irvine.
Marion—Ephraim B. Hall and Hiram Haymond.
Hampshire—Thomas R. Carskadon and George Sheets.
Monongalia—Waitman T. Willey and Henry Dering.
Marshall—John Hall.
Pleasants—Joseph Hubbs.
Preston—John J. Brown and John A. Dille.
Putnam—Dudley S. Montague.
Raleigh—Stephen N. Hansley.
Randolph—Josiah Simmons.
Roane—Henry D. Chapman.
Upshur—Richard L. Brooks.
Taylor—Harmon Sinsel.
Tyler—Abraham D. Soper.
Tucker—James W. Parsons.
Wayne—William W. Brumfield.
Wetzel—R. W. Lauck.
Wirt—Benjamin F. Stewart.
Ohio—James W. Paxton, Daniel Lamb and Gordon Battelle.
Wood—Peter G. Van Winkle and William E. Stevenson.

Subsequently the following additional delegates were admitted:

Fayette—James S. Cassidy.
Wyoming—William Walker.
Calhoun—Job Robinson.
Logan—Benjamin H. Smith.
Mercer—Richard M. Cook.
McDowell—J. P. Hoback.
Nicholas—John R. McCutchen.

John Hall of Mason was made permanent President and Ellery R. Hall, then from Taylor, afterwards resident at Fairmont, permanent Secretary.
A discussion arose on a suggestion made by Mr. Lamb that the members take the oath prescribed by the ordinance for the reorganization of the State government. Mr. Stevenson of Wood suggested whether it would be proper for them to take an oath to maintain the constitution of Virginia when they were here for the purpose of either partly or totally superseding it with another. Mr. Willey supposed the suggestion was made as a test of the loyalty of members. For his part, he came here endorsed by his constituents as a loyal man, worthy of their confidence. It seemed too much like suspecting themselves to prescribe oaths to a body that was above all the ordinary requirements of legislation. Mr. Van Winkle said they met under authority of the restored government of Virginia, which paid their wages and provided every necessary to forward the objects of the Convention. He read from the ordinance calling the body together: "That the government of the State of Virginia as reorganized by the June Convention, shall retain within the territory of the proposed State, undiminished and unimpaired, all the force and authority with which it has been vested until the proposed State shall be admitted into the Union by the Congress of the United States." In the ordinance of reorganization was prescribed an oath for all the officers of the State government and the members of both houses of the General Assembly. It was true the ordinance did not ask this body to take the oath; but holding their authority under the State government, he thought courtesy and that
feeling of duty they owed the State made it proper and decorous that the oath should be administered to the officers and members of this Convention. Mr. Dille did not see the necessity of taking the oath, which seemed to him without authority and merely a test of the loyalty of members. Mr. Lamb disclaimed any intention to propose such a test. Mr. Brown of Kanawha held they had no right to prescribe oaths to each other not required by the law under which they were assembled. None doubted their loyalty, and oaths were too sacred to be made common by prescribing them to one another without authority of law. Mr. Hall of Marion thought it was no time to hesitate about taking the oath. He believed every man present was loyal, but he was unwilling they should seem to hesitate. Mr. Lamb put his suggestion into the form of a motion. Mr. Sinsel moved to indefinitely postpone it, but the Convention refused by 28 to 14. The motion was adopted and the oath administered to the members by the Secretary.

In the second day's session, Mr. Van Winkle, from the committee appointed for the purpose, reported a plan for distributing the work. Committees were agreed to with chairmen as follows:

On County Organization, Pomeroy.
On Legislative Department, Lamb.
On Executive Department, Caldwell.
On Judiciary Department, Willey.
On Taxation and Finance, Paxton.
On Education, Battelle.
Schedule, Hall of Marion.
Mr. Van Winkle proposed an inquiry into the propriety of having the debates officially reported and published. The committee in whose hands the matter was placed took no action till December 16th, when they were discharged from further consideration of the subject. One of the press reporters who was making a daily synopsis of the proceedings was preserving a verbatim report, and it was the discovery of this fact which led Mr. Van Winkle to make the effort he did to have the record preserved.

A committee of nine on boundaries was raised, on suggestion of Mr. Lamb, and Mr. Stuart of Doddridge made chairman of it.

PARLIAMENTARY COUP.

Mr. Dolly in the ninth day's session, with a fine appreciation of their authority, offered a resolution to "repeal the act of the former Convention on boundary." He did not understand apparently that the Convention which had permitted them to be brought together had the right to prescribe exactly what they might do, and that they had no powers beyond those with which that Convention had invested them: that the superior Convention, representing the whole State of Virginia having limited in precise terms the territory out of which the new State might be formed, this limited, subordinate body had no authority to include another inch. There was the same kind of assumption of ungranted authority in regard to the name a day or so later.
On the fourteenth day, Robert Hagar from Boone County, a Methodist preacher, a rugged old anti-slavery patriot, who had little education but a great deal of simple hard sense and honesty of purpose, offered for reference a resolution that the Convention inquire into the propriety of making the new State a free State, by incorporating in the constitution a clause for gradual emancipation.

This was followed the same day by a counter resolution from Brown of Kanawha, who, all through the Convention showed such marked pro-slavery and State rights leanings as to sharply suggest whether he had not made a mistake and got into the wrong Convention—at the wrong end of the State. His resolution set forth that it was “unwise and impolitic to introduce the discussion of the slavery question into the Convention.” It was the same old policy of suppression which characterized the partisans of the institution everywhere. Even here where they were framing the organic law that was to govern what was to be one day a great, progressive, free and enlightened people, a vital question of economic policy, leaving out of sight its ethical and political aspects, must not be considered. A question, too, which lay at the root of the whole movement of which this Convention was a part! But there was to be more of the same thing.
One of the things early determined by the Convention was that they would not have the name. The prescription laid down by the creative body and confirmed by vote of the people concerned was "repealed," as Dolly would say. Sinsel of Taylor made the motion to strike out "Kanawha." He wanted to retain the name of Virginia because it suggested the mother of the Savior, and because the mother State had been "named for the Virgin Queen." Mr. Brown of Kanawha suggested that the vestal character of the queen referred to was not so well attested as some other facts in English history. Mr. Parker objected to the present name because there would be "too much Kanawha." There was a county of that name, two rivers, and the capital of the county was called "Kanawha Court-House." It was liable to produce confusion in postal matters.

Mr. Lamb said the name was a compromise made in the committee who had reported the ordinance for division, accepted by the August Convention and approved by the vote of the people. What was there to attach them to the name of Virginia? He had been an inhabitant of Western Virginia thirty-odd years. During that time what had they received from Virginia but oppression and outrage? And they had been complaining of the policy forced upon them. Virginia was loaded down with a debt created for public improvements, and where was there a
foot of these improvements—one public building—within the borders of Western Virginia? Was there anything in the recent proceedings at Richmond to attach them to the name? Had not every measure been forced upon them against their protest? "Did they hesitate on our account to adopt measures not in the interest of the people but of the conspirators who had been leaders of the people heretofore in Eastern Virginia, who had attempted to transfer us at once, without our consent, to the Confederate States, and would have been glad to transfer the war to the borders of the Ohio River?" Were they going to retain the policy of Virginia along with the name, when they were here for the very purpose of revolutionizing that policy in every respect that was possible? Or were they to change everything Virginian but the name and proclaim in the very act this Convention was about to adopt that they felt grateful for the favor the State of Virginia had theretofore bestowed on them? No; he wanted to cut loose even from these recollections; he had no hesitation in proclaiming to this Convention and to his constituents that there was nothing in the conduct of Virginia that entitled her to give us a name or claim our attachment. The retention of the name would create the impression abroad that the Virginia policy was to continue and it would repel people from the new State.

**WILLEY'S CONSTITUENTS CRY FOR IT.**

Mr. Willey disclaimed any personal interest in the name, but his constituents were not willing to have the new State at all if they could not have Virginia in the
Yet 1,591 of Mr. Willey's "constituents"—an overwhelming majority—had voted they wanted to erect the new State of "Kanawha," and so far as appeared, no protest was anywhere made against the name!

**NO AUTHORITY.**

Mr. Paxton held that the Convention lacked authority to change the name. If they could depart from the prescription in this instance, they might in any other; and where would the precedent lead?

**VAN WINKLE'S WIT.**

Mr. Van Winkle feared from indications some gentlemen here intended to remain Virginians after the separation. He would like to know "whether, when we have organized a new State and we meet for the purpose of transacting business appropriate to our new situation, and there are questions before us relating to our peculiar circumstances, we are to be told, they did not do so in old Virginia?" If they were so servile to old Virginia now, when about casting off the fetters—if they could not forget their servile habit but must continue to cringe and bow the knee to their old oppressor—this movement had better stop precisely where it was then. They were like the Israelites of old; they had crossed the Red Sea, but whether Pharaoh and his hosts were drowned had no precise information. But they had just entered on the borders of the wilderness and needed all their courage before they could reach the Promised Land; and already the cry was going up: "Would God we had died by the hands
of the Lord in the land of Egypt, when we sat by the flesh-pots and when we did eat bread to the full!" For his part he had positive objection to anything which compelled them to attach a "Virginia" to it.

A WIDE-AWAKE "RIP."

A notable man was this Peter G. Van Winkle—not for his public virtues alone, which were eminent, but for his personal qualities as well. He had come of the solid old Dutch Knickerbocker stock at New York, and was proud of it, and had a right to be. For where on the planet, past or present, shall we find a strain which has more nobly illustrated the highest human virtues than the stock from
the low countries around the delta of the Rhine? Who watered the tree of religious liberty with the blood of eighty thousand noble men and women in resistance to the inquisition under the unspeakable Phillip II.; who are the greatest merchants and colonizers of the modern world; who are just now illustrating anew, amid the veldts and kopjes of South Africa, the inextinguishable love of liberty which has characterized the race ever since Julius Caesar first dragged them into history out of their forests and morasses by the sea. Van Winkle was a man who united personal graces with fine intellectual gifts. A large brain was supported by a superb physique. He was rotund of figure, with smooth clean-shaven face; skin white and clear; eyes large, blue, bright, one turned a little away from its fellow, giving him a wide-awake look. He was scrupulously neat, even dainty, in person and attire and looked always fresh and clean as just out of the bath. But the most pleasing thing about him was his great kindliness and the pure intellectuality which characterized all his utterances. No man could show a finer sense of consideration for others. His wit was keen but always kindly. He had the refined sensibility of a woman united to the mental virility of a man. He was scholarly and literary in his tastes; was possessed of wide knowledge on many subjects; had done something in authorship without publishing; had written a book, it was understood, in which he had developed some special theories and crotchets of his own and embodied his beliefs on interesting questions. In public bodies he never talked for talk's sake; he always had something to say worth hearing, pertinent and necessary to the matter in hand. While both lawyer
and scholar, Mr. Van Winkle was also a man of affairs. He had a capable knowledge of large financial subjects; and it was his pride when in the Senate that this had been recognized in his appointment to be a member of the Senate Finance Committee.

Mr. Stuart of Doddridge, who had made the motion in the August Convention to strike our Kanawha and substitute "West Virginia," said his constituents had voted for division with a protest against the name.

LAMB CONFIRMS PAXTON.

Mr. Lamb called attention to Mr. Paxton's point, that the Convention had no authority to make the change. He quoted the ordinance to show that the name was prescribed as much as any other condition, and reminded them that the people had confirmed the action of the Convention in this as in other respects. The Convention had ordained that "a new State to be called the State of Kanawha" should be instituted, and had provided in the next section that the vote be taken on the formation of the new State "as hereinbefore proposed." He saw no propriety in the assumption of the power to make this change.

WILLEY ASTRAY.

Mr. Willey claimed this Convention was "as sovereign as the Convention that made the ordinance. We are the people," he said, "as much as that body was the people, and our action is no more final than the action of that body was final. Our action, as the action of that body did, has to go back for the sanction of the people." This
is a singular error for a man so well informed as Mr. Willey. The August Convention was a body with original powers. It represented the whole State of Virginia. Its action did not "go back" for confirmation by the people. It created this inferior, limited convention to do a particular work, which it was specifically provided must go back for confirmation by the people in the limited district here represented. "Our power in the premises," continued Mr. Willey, "is perfect; and settling this question on any other interpretation of our powers would very much hamper us in regard to projects of vastly more moment that will be before the Convention. We are proposing absolutely and unconditionally to include in the New State a very considerable number of other counties not included in the ordinance. Yet I think we have the power to do so. It is to go back to the people." The fallacy in Mr. Willey's position lay in the fact that this action went back for the ratification of the people within the limits of the New State only, not to the people of the State of Virginia by whose convention the boundary for the New State had been limited. The change of name it would seem from Mr. Willey's language was the entering wedge to the "projects of vastly more moment," which included the unauthorized inclusion of districts which, if taken in, would have defeated the New State entirely.

BATTLE WANTS SOMETHING "FRESH."

Mr. Battelle supported the position taken by Mr. Paxton. "Not only," he said, "did the ordinance fix the name but it has been ratified by solemn vote of the people;
and I find, so far as I understand my powers and duties here, no warrant to go behind that vote of the people. We are now forming a new State. I, for one, want a new name—a fresh name—which if not symbolical of new ideas would at least be indicative of our deliverance from very old ones.”

BUT DOESN'T GET IT.

"Kanawha" was stricken out by a vote of 30 to 14. "West Virginia" was substituted by an affirmative vote of 30, the remainder of the vote scattering between "Kanawha," "Western Virginia," "Allegheny" and "Augusta."

STUART'S BOUNDARY DRAG-NET.

December 5th Mr. Stuart made his first report on boundaries. As foreshadowed by Mr. Willey, he proposed to take in, outside of territory included under the August ordinance, without conditions, Greenbrier, Pocahontas, Monroe, Mercer, McDowell, Buchanan and Wise, and contingently other districts as follows:


AN UNPOPULAR PAIR.

The names "Buchanan and Wise" had become odious for other than geographical reasons. In the consideration of the counties to be embraced without submitting the
question to them, Mr. Lamb moved to strike out these two. On this motion the Convention entered upon a discussion of the whole problem of boundaries, involving the power of the Convention to go outside the delimitations laid down by the August Convention and the expediency of including any or all the districts proposed by the committee. The debate was one of the most important and interesting of the session. It occupied the Convention from the 5th to the 12th of December and fills more than four hundred closely written pages of manuscript. The purpose foreshadowed in the change of name was in a limited way embodied in the result.

The August ordinance authorizing a vote on division and constituting this Convention had provided that in addition to the thirty-nine counties specifically included in the proposed State, there should be embraced "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 such other counties as lie contiguous to the said boundaries, or to the counties named in this section, if the said counties to be added or either of them" should by a majority of the votes cast at the same election signify their wish to be included and choose delegates to this Convention. The only delegates who had presented themselves under this provision from any of these counties outside of the thirty-nine were from Hardy and Hampshire.

Finally a vote was reached on Mr. Lamb's motion and Buchanan and Wise were eliminated. Mr. Willey then proposed a resolution setting forth that those seven counties (including Buchanan and Wise) ought to be included
and that if at an election held for the purpose at a blank date in those counties a majority of the votes cast in the district composing them, and in a majority of the counties, should be in favor of the constitution when submitted, the Legislature should be requested, in giving its consent, to include that district. Mr. Willey who, in the matter of the name, had strongly declared this Convention might disregard the prescription of the August Convention, took the other tack when it came to including more territory. He went over the question elaborately and ably and showed that the Convention was clearly bound to respect the limits set by the August Convention, and that none of the territory which had not complied with the strict terms of that ordinance could be included without its consent. The effect of his proposition to wait for that consent in the case of the five counties first named would have proved a very serious embarrassment to the progress of the New State movement, for those counties lay within the Confederate lines and were in no condition to act upon a matter of this kind.

TO CLOG NEW STATE.

Brown of Kanawha, who led the movement for embarrassment and delay, and who was especially determined to take in the rebellious districts east of the Alleghenies in the Southwest, was not troubled by any of Mr. Willey's scruples. In the matter of the name he thought they were bound by the August ordinance. "I maintain," he said, "that the people have ratified this question and have determined by our presence here that
the new State shall exist and that it shall be called 'Kanawha.'" But now the boot was on the other leg! Willey had turned one way, Brown the other. Circumstances do alter cases! In one speech Mr. Brown permitted it to appear that he wanted this southern territory to give weight to his end of the State in case the State should, perchance, come to maturity, a contingency, however, that would never have troubled him if his plans could have been carried out.

Mr. Lamb draws the line.

Mr. Lamb, who perceived very clearly the effect of these propositions for enlargement and delay, reminded the Convention that he had not been in favor of the movement for division when it was begun; but having been overruled and sent here to make a constitution, he proposed in good faith to do what he could to carry out the wishes of his people. He recognized the lack of direct authority to exceed the limits and conditions laid down by the August Convention; but, believing the welfare of the New State required some territory in addition to the thirty-nine counties, and recognizing the well established rule of law that what is impossible is not required, he thought this might be brought in and that the irregularity would be cured by the consent to be given by the Legislature. Mr. Van Winkle held a similar attitude, and especially advocated the inclusion of the counties along the foot of the valley covering the line of the Baltimore & Ohio Railroad.
Brown of Preston held there was no authority to include more than the forty-one counties represented in this Convention, and that it was not even desirable to do so. These gave them a convenient, compact and homogeneous State, and prudence forbade them endangering its success by attempts to extend a doubtful authority over territory not suited or desirable. He said if all the counties recommended by the committee were taken in there would be in the New State a secession population of over 303,000 as against 224,000 loyal. Dille, Battelle, Brooks, Powell and some others held similar ground.

THE LAW OF MIGHT.

Brown of Kanawha, with an eye to the Southwestern districts, quoted Vattel on the law of nations to show the Convention might take any territory it thought necessary. "Whenever," says Vattel, "a territory becomes essential to the prosperity and safety of a State, it may be purchased if it can, or, if it cannot, it may be taken." Such State being, of course, the judge of the exigency! This would be a very convenient "law" for a strong State, but might be very inconvenient for a weak one. Mr. Brown instanced Jefferson’s purchase of Louisiana as an illustration of Vattel’s law, the inference being that Jefferson was prepared to seize the territory if Napoleon had declined to sell. Vattel’s law has had many modern illustrations—European spoliation in Africa and in China, especially Great Britain’s attempted conquest of the Boer
Republics, and Russia's seizure of Manchuria. Mr. Willey, in defining his position, made the point that in changing the name of the State the Convention had wronged no one because that concerned nobody outside the State limits; but to attempt to take outside territory trenching on the rights of others. The effect of Mr. Willey's motion, however, if successful, would have been to aid Mr. Brown's campaign of delay and embarrassment.

The outcome of this preliminary discussion was that the counties of Pocahontas, Greenbrier, Monroe, Mercer and McDowell were included absolutely, Mr. Willey's proposition having been rejected.

The boundary question, after several days' discussion over the other districts proposed by the committee, was disposed of by including conditionally only Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick, all of which were afterwards incorporated except Frederick.

A MODEST PROPOSITION.

In considering the option given this group of counties lying along the Baltimore & Ohio Railroad, at the foot of the Valley, Mr. Brown of Kanawha again brought forward his scheme to place in the same category the counties of Lee, Scott, Wise, Russell, Buchanan, Tazewell, Bland, Craig, Allegheny, Bath, Highland, Loudon, Alexandria, Fairfax, Northampton and Accomac. This time Mr. Brown had crossed the Chesapeake Bay and reached the Atlantic! Mr. Battelle's suggestion that he ought to "just include the whole State" was apt. What purpose
Mr. Brown sought by such impossible propositions is not easily explicable unless it was to ridicule and embarrass the whole New State movement. He certainly showed scant respect for the Convention.

Upon this, Hiram Haymond of Marion, declared he never would consent to add another inch to territory already included. No friend of West Virginia could vote for such a motion. "Take in those counties," he said, "and our labors are at an end and I, for one, would be ready to go home." Henry Dering of Monongalia concurred. If these counties could be taken in, he said, they would give the Reactionists control of the New State and defeat the object of its creation. The adoption of the resolution would be the death-knell of the New State, and if adopted they may as well go home.

Mr. Battelle suggested to Mr. Brown that he was "entirely too modest. You ought to just take in the whole State," said Battelle.

Mr. Brown's proposition was defeated by a decisive vote. Those who voted for it were: Hall of Mason, Brown of Kanawha, Chapman, Carskadon, Dolly, Hubbs, Montague, McCutchen, Simmons, Stephenson of Clay, Sheets, Smith and Taylor.

WEST VIRGINIA INCLUDES THE OHIO RIVER.

When the report had been finally disposed of, it was recommitted and the committee directed to prepare a provision defining the boundaries of the New State. Touching this Mr. VanWinkle remarked:

Under the ordinance establishing Kentucky—which was anterior, I think, to that erecting the Northwest Territory—the jurisdiction of Kentucky extended to the north bank; and under the
cession of the Northwest Territory the claim is made, while the jurisdiction for some purposes is concurrent, to the far bank of the Ohio as the territory of Virginia at this time, by which of course all the islands belong to Virginia. If the river were made the boundary, then we take the middle of the channel and that in most cases would throw the islands to the other side. It may be remembered that this question was before the General Court while that existed, a case arising from the apprehension of some abolitionists on the Ohio side of the river opposite my county. The court was then composed of twenty-one judges, I believe. It turned out that there were three opinions in the court. One went for high-water mark; one for running-water mark, and the third for low-water mark. And as there was not a majority for either there could be no decision. It was a very singular case, but they had to admit the parties to bail and let them go. Still the claim is to the other side of the river and it would be proper for consideration whether we should not, in the language in which the old ordinance is couched, repeat the claim in this constitution.

The constitution as finally adopted described the boundaries of West Virginia by reciting the counties included and adding the following:

The State of West Virginia shall also include so much of the bed, banks and shores of the Ohio River as heretofore appertained to the State of Virginia; and the territorial rights and property in and the jurisdiction of whatever nature over the said bed, banks and shores heretofore reserved by or vested in the State of Virginia shall vest in and be hereafter exercised by the State of West Virginia.

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CAN THERE BE TREASON AGAINST A STATE?

In a discussion on fundamental provisions December 13th, under consideration the section of the committee’s report undertaking to define “treason against the State,” and provide punishment for it, Mr. Van Winkle, chairman in charge of the report, said:
There have been great doubts—and I think very well-founded—whether there is such a thing as "treason" against a State. The United States Government undertakes the conduct of wars that are to be conducted in or on behalf of the States. States are not, by the Constitution of the United States, permitted to keep armies or ships of war in time of peace. The United States is bound to repel the invasion of any State and, upon proper application, to suppress any insurrection arising within any State. The qualification that application shall be made I shall only construe as being to prevent the necessity of the United States forces being called forth on trivial occasions. It is hard at some times to distinguish between a mere riot and an insurrection; but whenever the State notifies the general Government in a proper way that there is an insurrection within its borders, the United States is bound to suppress it. It is true the State may use the militia; but the militia is put under control of the United States in time of war.

Who can be enemies of the State, therefore, unless they are at the same time enemies of the United States? And if enemies of the United States, the act of treason is an offence not against the State, but against the United States. The first official recognition of this restored government was an application to the President on the information that the State was in a state of insurrection and a call on the United States for aid in suppressing it. The reply was almost immediate from the department that the aid would be furnished. That was the first formal recognition of the restored government. The documents accompany the Governor's message. We hold that all expense incurred by this restored government, or by the government of any of the loyal States, in suppressing this rebellion, in defending their own territory against the rebels or insurrectionists, must be reimbursed to the State by the general government—and upon this very principle, that the war was the war of the general government. It was only the war of the States so far as they were part of the United States.

If this be correct, the other conclusion follows, that treason can be committed only against the United States. There is not, and has not been, in the Constitution of the United States any such clause. There is a statute, however, which defines treason
in this way and makes other acts, for instance the setting up of another government, treason against the State.

Not anticipating that this question would arise here this evening, I am not as fully prepared to give my views on it as I might have been, but think I have stated the leading principles which must govern in this discussion. I have conferred with legal gentlemen outside the Convention and believe they are of the same opinion. I think a similar decision has been made by the Supreme Court of the United States, though I have not recently seen the decision itself and cannot say precisely how far it goes. I am sorry the member from Monongalia has been compelled to leave us. I had some conversation with him on the subject and think he was very clear that there could be no treason against a State of this Nation.

Mr. Lamb: It seems to me entirely unnecessary to put any provision on this subject into the State constitution. I believe there is no provision on the subject of treason in the present constitution of Virginia. There is no provision in it on the subject of murder. Yet that does not prevent the Legislature from enacting proper laws to prevent that offense. Why not leave this on the same footing?

Mr. Brown of Kanawha took the other side of the question and elaborated the general States rights view. He referred to the case of John Brown at Harper's Ferry, who was indicted for treason against Virginia, tried and convicted in a Virginia court, sentenced and executed; and he quoted Wise's insulting announcement that when Virginia was done with Brown "the United States could have the residue for any treason against the United States." He denied that an insurrection in a State is necessarily an insurrection against the United States, and that the United States "can assume upon itself to put it down without being first called upon by the State government." "I maintain," he said, "within the borders of the
State the jurisdiction of the State. When a local insurrection arises within that border it is against the State government, not against the United States government. The United States has no right to enter the territory with her army or interfere with the local regulations of the State until, as prescribed in the Constitution of the United States, the Governor or the Legislature calls upon the President to aid us.”

Mr. Van Winkle read from a manual a reference to Story’s Commentaries, p. 171: “A State cannot take cognizance of or punish the crime of treason against the United States. As treason is a crime whose object is the overthrow of the government, and as the government of the State is guaranteed by that of the United States, it follows there can be no treason against a State which is not also treason against the United States.” Concerning John Brown, Mr. Van Winkle remarked that he could not take that case as much authority, “especially accompanied with that declaration of Governor Wise that when the State was done with John Brown and his confederates the general government could have what was left of them. I should think, sir, it was only the first act of the rebellion. I do not know how it happened that the United States officers did not claim jurisdiction in that case. But I cannot think the case as tried before the circuit court there decides anything in reference to the matter in question.”

Mr. Brown, of Kanawha: The gentleman perhaps has but little regard for the authorities of Virginia, as I should infer from the last remark he made, and may have a good deal for
Judge Story, or the book from which he reads. Surely the remarks of Governor Wise could not affect the validity of a judicial decision.

Mr. Van Winkle: I say the language in which that remark was couched, and the spirit in which it was conceived, indicated a rebellious spirit against the United States; and the whole transaction may have been in the same spirit. They claimed a right to punish where they had no right.

Mr. Brown denied this. The question in this case was whether treason could be committed against a State. That question was then decided by the proper judicial tribunal to which the law had referred the case. The ablest counsel in the country were there; the most learned lawyers went there to test that very question. The Attorney-General was very strenuous that if anything wrong was done to that man the power of the Nation should be brought to his rescue; but everything was legitimate, and it was carried to the court of appeals of Virginia, who refused a supersedeas. Would it be possible that these men would be allowed under this plain state of the case to be tried and sentenced to hang for an offence that could not be committed?

Mr. Van Winkle asked Mr. Brown whether in his opinion the government of the United States could have punished John Brown. Mr. Brown replied that he had "no doubt about it." "If they could," said Mr. Van Winkle, "then it was treason against the United States; and if it is treason against the United States, my point is simply that the State cannot punish him."

EMANCIPATION.

On the sixteenth day, Mr. Battelle offered for reference a provision embracing these propositions:

1. No slave shall be brought into the State for permanent residence after the adoption of this constitution.
2. The Legislature shall have full power to make such just and humane provisions as may be needful for the better regulation and security of the marriage and family relations between slaves, for their proper instruction, and for the gradual and equitable removal of slavery from the State.

3. On and after the 4th of July, 18—, slavery or involuntary servitude, except for crime, shall cease within the limits of this State.

January 27th, Mr. Battelle introduced for reference the following:

1. No slave shall be brought into the State for permanent residence after the adoption of this constitution.

2. All children born of slave parents in this State on and after the 4th day of July, 1865, shall be free; and the Legislature may provide by general laws for the apprenticeship of such children during their minority and for their subsequent colonization.

Touching the question thus introduced in the Convention, the Intelligencer, December 9th, said:

We have endeavored to show how entirely adverse to the best interests of Western Virginia it would be for the present convention to adjourn without first engrafting a free-State provision on our constitution in the shape of a three, five or ten years emancipation clause. We should esteem it far better that the Convention had never assembled that than it should omit to take action of this character. * * * Congress will hesitate long before it will consent to the subdivision of a slave State simply that two slave States may be made out of it. The evil which has so nearly destroyed not only Western Virginia but the whole country will find that its tug of war is yet to come when it has even run the gauntlet of our Convention and our Legislature. We believe when it reaches Congress it will reach its hitherto and that it will never pass. It will avail very little for this Convention to remain in debate on this subject for a month at a heavy expense and consummate a work which will only at last end in defeat and entail upon its framers
the cold distrust of the only friends they have in the world. The loyal masses of the free States who are fighting the great battle of constitutional freedom, who are endeavoring to stay the absorbing and consuming demands of slavery upon this continent, will never consent that in the very midst of them it shall burst out in a new place with the extraordinary demand that its present representation of a State in the Senate shall be doubled. * * * We say, then, to the members of our Convention that before you waste your time and money on a constitution you look to its probable fate.

On the same question about this time, the Cincinnati Commercial made the following comment:

The Convention cannot ignore the causes which have led to the disruption of the State; that have imposed heavy burdens of taxation on the people of Western Virginia and rendered their political and commercial influence nugatory upon all occasions. Slavery has not been profitable to the people of Western Virginia. Its presence has prevented immigration, dwarfed enterprise and delayed the development of the physical resources of the country. The people have paid a heavy price to insure the safety of his sacred and sable majesty; and in severing their connection with the eastern part of the State, it is natural they should submit to the people for whom it is devised the question whether they do not desire the complete severance from the cause of their heavy burdens in the past.

"TOM" HARRISON WANTS THE OLD CONSTITUTION.

In the nineteenth day's session, Thomas W. Harrison of Harrison distinguished himself by offering a proposition that the Virginia constitution be referred to a committee of five with instructions to modify it so as to adapt it to the territory embraced in the new State and to provide for the formation of a new constitution at some future time.
The Richmond Secession Convention had a short time before closed its sitting, after having made numerous alterations in the Virginia constitution. One of these empowered the General Assembly to prohibit the future emancipation of slaves; so that a slave-owner who from conscience or other reason might desire to emancipate would have to choose between remaining an owner and selling his slaves in the market: it being thus rendered impossible that the slave should become free. This looked to making the institution iron-clad in the Confederacy.

AND GETS AN EXTINGUISHER.

Mr. Van Winkle said Mr. Harrison’s proposition was a larger “hankering after the flesh-pots” than he had expected. He supposed the “charms of that old constitution, which had recently been modified and amended under the auspices of ‘Sandy’ Stuart in the Richmond Convention, by which every poor man is to be deprived of a vote and by which one class was to be made everybody and the other nobody, were so fixed in the gentleman’s affections that he would like to include those recent amendments.” He moved Mr. Harrison’s resolution be indefinitely postponed. The Convention so voted by 41 to 2.

ANOTHER OLD FOGY.

Mr. Dille was another who found it hard to tear himself away from the ways of old Virginia. When it came to the suffrage provision, which had been drawn by Mr. Van Winkle on the broadest lines then feasible—imposing
no restriction except for crime—Dille moved an amendment to make the payment of a State and county tax a pre-requisite. Mr. Van Winkle declared he would disfranchise no man except for grave crime. He would not put the failure to pay a small tax—which in some cases might be unavoidable—on the same footing as treason, felony or bribery in an election. "Do you know," he asked, "how much a man was worth in Virginia under the old constitution?" In the year 1850, he said, according to the lists of that year, $532 of property was the unit of representation. That is to say that $532 of negro or other property counted as much in representation and had as much weight in the Commonwealth as a white man. "Under the old constitution," he said, "a man who was competent under the Constitution of the United States to fill a seat in Congress might be disfranchised for the omission to pay twelve and one-half cents tax."

TO SUBMIT EMANCIPATION TO THE PEOPLE.

In the afternoon session of February 12th, Mr. Battelle offered the following:

1. Resolved, That at the same time when this constitution is submitted to the qualified voters of the proposed new State to be voted for or against, an additional section to Article —, in the words following:

"No slave shall be brought or free person of color come into this State for permanent residence after this constitution goes into operation; and all children born of slave mothers after the year 1870 shall be free, the males at the age of 28 and the females at the age of 18 years; and the children of such females shall be free at birth."
Shall be separately submitted to the qualified voters of the proposed new State for their adoption or rejection; and if the majority of the votes cast for and against said additional section are in favor of its adoption, it shall be made a part of Article — of this constitution, and not otherwise.

2. Resolved, That the Committee on Schedule be and they are hereby instructed to report the necessary provisions for carrying the foregoing resolution into effect.

This, it will be observed, was not a proposition to incorporate gradual emancipation in the constitution. It was only to let the people vote separately when they voted on the constitution whether they wanted such a provision put in.

Mr. Battelle remarked that the convention could take whatever action in reference to these resolutions they might think proper. If they chose to make them the order of the day for any fixed future day, as an individual he did not care; but he supposed there were some gentlemen who would wish to discuss this matter, and they might proceed a while at least in that discussion.

Mr. Sinsel moved to make the resolutions the order for next morning at ten o'clock.

CONVENTION WILL NOT HAVE IT.

Mr. Hall, of Marion: I move to amend the motion by moving to lay on the table.

Mr. Battelle: I sincerely hope that this Convention will not. I hope that no such gag rule will be instituted here in this Convention.

Mr. Stuart, of Doddridge: That question is not debatable.

Mr. Powell: On that question I ask the yeas and nays.

Mr. Van Winkle: I understand that is a privileged motion, to lay on the table without day. That can be made without amendment.
The President: It is a substitute and will be voted on as such.

Mr. Hall, of Marion: I design to make the motion merely to accomplish the object.

The President: It will be regarded as a substitute.

On the motion to thus lay on the table indefinite the vote resulted:


So the resolutions were laid on the table.

POMEROY TRIES TO RESURRECT.

The following day, after reports on finance and county organization had been disposed of and sent to the Committee on Revision, Mr. Pomeroy, of Hancock, suggested that as they now had nothing else before them the vexed question raised by the resolution offered the day before by Mr. Battelle "might be compromised," either by adopting a proposition already written out or by raising a committee of conference representing in about equal number the opposing views, and let them bring in a report, either to adopt the first of the resolutions offered by the gentleman from Ohio and make that part of the constitution without any separate vote by the people or raise a committee of conference.
I fully concur, Mr. Pomeroy continued, with the remarks of the gentleman from Logan in conversation on this subject that we ought all to desire a new State above everything else and take action which would meet not only the favor of the people but of Congress. I am not prepared to say, from the fact of this business being hurried through, which is the best manner to proceed. I cannot conceive any evil that could result from a committee of conference, as I understand they would certainly report in favor of the first of the resolutions offered by the gentleman from Ohio being incorporated in the constitution; which is that no free negro or slave after the adoption of the constitution should be imported for permanent residence. So many gentlemen say they would agree to that there could be no difficulty in the committee of conference, for they would certainly report that part and then might take into consideration the other part. I cannot conceive if the committee would meet in the right spirit any evil would result, and if so it would be my idea to raise the committee now.

SMITH WANTS "COMPROMISE" BUT NO "EXCITEMENT."

Mr. Smith, of Logan: If there is a proposition of this sort proposed I would like for it to be read and if it meets our approbation, I would like for it to be adopted at once without a committee of conference if it can be. If it is thought probable it will not be, let us refer it to a committee of conference. But I would prefer the proposition being read as acceptable to myself and others who act with me. We may as well vote on it at once. I am willing, in a spirit of compromise, to concede anything I can properly concede; and I would prefer hearing the proposition that is proposed to be offered. I understand there is a gentleman who has a proposition, and I would like to have it read and then determine what to do with it, and if it is going to produce any excitement here I would prefer to have it sent to a committee of compromise.

Mr. Battelle: I regret, for one, that this subject is named now. A gentleman on the other side came to see me this morning, and inquired whether this topic would probably be up this morning. I, of course, could not speak authoritatively but thought it would not; and I pledged him, so far as I was concerned, that there should be no action on this question in his
absence. I want no action here that shall be a vote one way or the other without the fair presence and concurrence of gentlemen interested in both ways. I want, if I am defeated in my particular opinions on this subject, to have it fairly done; and if I succeed in my views I wish it fairly done; and for that reason, especially that I pledged myself to the gentleman who is absent, that nothing should be done here without his presence. I would regret that anything more be done at least than what was indicated by my friend from Hancock, the appointment of the committee. I would not wish to go into the discussion of the question in the absence of this gentleman.

Mr. Dering: How would it do to make it an order of the day for three o'clock?

Mr. Battelle: I suppose the appointment of a committee would be no infraction of that understanding?

**DILLE WOULD EXCLUDE NEGROES AS A "COMPROMISE."**

Mr. Dille: I have for some time had more trouble in reference to this question than perhaps any other that might be brought up before this Convention in any manner; and I have felt that something like this provision would harmonize and conciliate and do everything consistent to bring about a perfect harmony upon this, of all others, the most vexed question in our country. And I suppose, really, that we ought in the spirit of compromise come to some definite conclusion without any discussion or agitation upon this subject. And I suggest this morning upon my own responsibility, without even consulting with the friends of the proposition that was laid on the table yesterday, to inquire of the mover whether the first clause of the proposition laid on the table yesterday would probably as a compromise be acceptable to those favoring the motion to lay the original proposition on the table. With the frankness and good feeling characteristic of the gentleman from Logan, he intimated to me that he had no doubt the first clause would be acceptable to those entertaining views adverse to this proposition. I then intimated and I am willing to say that if this Convention can be reconciled upon that first proposition, and that proposition can be inserted in the Constitution with the cordial approbation of the friends of the proposition and those who may be adverse to the whole proposition, that I think we
ought to accept it. I lock upon a new State in West Virginia as a matter above and higher than all other considerations combined; and I think we bring about a state of feeling that will contribute more to the success—that will concede to the feelings and prejudices of our people and to the feelings and prejudices of those to whom we must look if we expect admission as a State into the Union. And if I can have the assurance that that proposition will meet with the approbation of this Convention, it will afford me great pleasure to present it; and having been accepted by those who oppose the whole proposition, I will say to them that as one individual I will oppose any action being taken on the latter clause of the proposition. I think it is right; I think it is due to members of the Convention, that we should make mutual concessions on this subject.

POMEROY FOR A CONFERENCE.

Mr. Pomeroy: I will now move, to test the sense of the house, as there are a number of gentlemen present on both sides, that a committee of eight be appointed. I see no evil that can result from this committee of conference. They would certainly report on the first part. Whether they do or not, it will be open to the Convention afterwards. And I want to say, Mr. President, that I hope all these things will be met in a spirit of conciliation and good feeling—no undue excitement on this subject at all. The committee will certainly report this first proposition, which the gentleman from Preston says he is in favor of; and I also am favorable to it, because we do not want any free negroes here.

BROWN OF KANAWHA DELIGHTED WITH DILLE'S "COMPROMISE."

Mr. Brown of Kanawha: I have just learned definitely of the proposition of the gentleman from Preston and his declaration; and I am very ready to say that I will meet him half-way with the right-hand of fellowship and adopt his proposition at once as a full settlement of this matter. And I believe, sir, it will give peace and quiet to our people; it will do justice to all, and it will compromise the rights of none; and when so great and good an object can be done, I shall be one of the first to accept and sustain it. I hope it will be the pleasure of every gentleman in the house to do the same thing.
Mr. Caldwell: I hope after the remarks we have all heard from my friend from Kanawha County that the gentleman from Hancock will see the impropriety of prolonging this matter any further and of the absence of any necessity for appointing a committee. I think this house now is in a position in which this proposition can be adopted, calmly and coolly, and almost unanimously adopted; and I hope my friend from Hancock will withdraw his motion for a committee, and I trust we will pass it unanimously.

Mr. Hervey: I am very much pleased to hear the proposition made by the gentleman from Preston. I have had some conference with a number of gentlemen who opposed the motion to lay on the table yesterday. We have great confidence in the discretion and forecast of the gentleman from Preston, and I confess, sir, that I have no fears at all. I believe it is bound to be a free State; and I have no doubt that as this seems to be the only exception by the persons from both sides that we better just vote that proposition as it stands without the committee.

A member asked what the precise proposition was. The Secretary reported the first clause of Mr. Battelle's proposition as follows:

“No slave shall be brought or free person of color come into this State for permanent residence after this constitution goes into operation."

Mr. Dille: I hope it will be the pleasure of the gentleman from Hancock to withdraw his proposition. And I hope further, with the feeling that I see around me on this subject that this proposition may be inserted in the constitution by an unanimous vote. I do not want a dissenting voice on that subject; and I want the whole matter to end there. I think we might spare a good day's work and a day's work that will tell upon the future of the new State of West Virginia.

PRESIDENT HALL APPROVES.

The President: The chair is of the opinion that if the disposition to compromise this question exists in the Convention—and it seems to exist there—that it would be certainly inadvisable to appoint a committee; that after what has occurred, it
might carry the idea abroad that there was a division here; that what we did we were forced to do through a committee of compromise. The chair would therefore suggest to the Convention that if there is that unanimity which the chair hopes there is, then it is better to dispense with the committee.

Mr. Pomeroy: The mover of the motion will very cordially withdraw it if the Convention is ready to vote. I can very cordially vote for that proposition and I thought the committee could do no harm.

BATTELLE PREFERENCES A CONFERENCE.

Mr. Battelle: I wish to say at this point that in view of the considerations before stated by myself I should prefer that action be not taken this morning on this question; and if anything is done I should prefer the direction intimated by the gentleman from Hancock. As I said before, I know there are gentlemen absent on both sides of this question, but I speak especially of gentlemen I know to be absent on the other side who before leaving came to me and intimated their desire that the question be not brought up this morning. As far as I am personally concerned, I expressed my own preference that it should not come up, and that if it did they should be notified thereof. I feel that my honor is involved in this point; and if the question is to come up for final action here, it is but right that they should be present. I will add, further, that personally I would prefer to have more time for reflection on this subject. The idea of incorporating this single provision is a new proposition to me, and I do not think it can interfere with the harmony and good feeling that prevails here this morning to either refer or allow the vote to be taken to-morrow morning. I should prefer that direction to the taking of the vote now, and I think it would be the fairest on all sides if we could understand it that the vote was to be taken then and everybody could be present.

Mr. Haymond: I am in hopes the gentleman from Hancock will withdraw. I think the resolution of the gentleman from Preston is the very thing, sir, that I wanted when I came here.

The President: The gentleman has withdrawn his motion.

Mr. Stevenson of Wood: I was going to make this suggestion—or if necessary make a motion—as there are a number
of gentlemen absent on both sides of this question, that they should have an opportunity of recording their votes on this subject if they thought proper, either to-day or to-morrow.

Several Members: Certainly.

The President: It will be considered as the sense of the Convention.

Mr. Pomeroy: I hope it will be the unanimous consent of the Convention that the vote be recorded on this, the yeas and nays.

Mr. Parker: If I understand, this is on the first clause.

The Secretary read the first clause of the propositions submitted yesterday by Mr. Battelle.

**Parker Has His Doubts.**

Mr. Parker: No one would be more gratified than myself if the whole question could be entirely ignored. The only question in my mind—and the question has been there for some time is whether we can get through Congress—whether we can consummate our end. If we could do this without touching the question at all, it is my desire and has been all the time. Now the question arises in my mind whether the adoption of what now seems to be pretty generally conceded—if that is to be satisfactory and enough, I am for it—that is, if it is necessary. But whether it goes far enough to meet what will be necessary, to ensure us admission—the approval of Congress and admission—that is the question. And it is a vital question, it seems to me. I would therefore, Mr. President—because I don't believe discussion on a question of this kind is going to do any good—I should hope that the matter might be referred to a committee fairly representing both parties here—say of eight—and that they investigate the whole matter and report what in their judgment the Convention ought to do to secure us success. Because unless we meet with that success there, why then the whole thing here is a stupendous and expensive abortion, not to say disgrace; and its projectors and conductors, including ourselves, would be the object of universal derision.

The President: The question is a plain one. Everybody seems to have made up their minds. The object of the Convention is to avoid discussion as far as possible.
Mr. Stuart of Doddridge (who had just come in): When I vote on this, do I understand that I am voting on it as a compromise measure, and as settling the question?

A Member: Yes, sir.

Mr. Stuart of Doddridge: Then, sir, I do not want to say one word.

BATTLE ENTERS INTO NO "COMPROMISE."

Mr. Battelle: The gentleman from Doddridge is now in, and I wish the Convention to bear me witness that the coming up of this question now is not by my act and that I have redeemed in good faith the promise I made him this morning. I much prefer that this question should not be considered now and especially after the intimations given to it.

And I wish here to say that so far as I am concerned, as an individual, I enter into no arrangement with regard to compromises in this fashion. I expect to vote for what suits me and to vote against what I dislike. I should much prefer if the question did not come up this morning and was willing, so far as I regarded it as violating no understanding with individual members—if it did come up at all, that it be referred to a committee such as indicated by the gentleman from Hancock, of four persons on each side. I should feel myself, if voting for that proposition, bound to at least pay very respectful attention to their report whatever it might be. I am prepared to vote for the pending proposition in good faith; but I wish to say in answer to the question of the gentleman from Doddridge that on my part I do not enter into this arrangement as a matter of compromise; because there has been no arrangement which could give it the dignity of a compromise: I mean no such parliamentary arrangement, for instance, as its reference to a committee.

And I will say, sir, with the indulgence of the Convention while on the floor—and that is the crowning motive impelling me as an individual in all this business—that we should have a new State; and I desire to see such action taken as will most effectually secure that end. I have not had time for reflection to determine in my own mind how far it will go towards securing that end. I should have preferred, if the question must be
mooted to-day at all, that it be referred to a committee fairly
and properly constituted of gentlemen of different views, that
they might report to us to-morrow morning.

The question was taken on the motion to incorporate
the first proposition in the constitution and it was agreed
to, with a single dissenting vote, that of Mr. Brumfield.

**DID HIS OWN VOTING.**

Several members appealed to Mr. Brumfield to change
his vote and make it unanimous.

Mr. Brumfield replied that he didn’t “take as much
part in the discussions as some of the members,” but he
always “did his own voting.”

The members absent when the vote was taken were:
Paxton, Mahon, Willey and Walker.

**HAYMOND DIDN’T REFLECT.**

Mr. Haymond: I congratulate this house and the country
on the vote just taken. If nothing more is said about slavery
here, it will do more than anything this house can do to cause
all opposition to this Constitution and this New State to cease.
And I ask my friend from Ohio (Mr. Battelle) never to mention
slavery here again.

Mr. Dering moved to adjourn.

Mr. Battelle: Will the gentleman withdraw his motion a
moment?

Mr. Dering: Certainly.

Mr. Battelle: Indulge me a moment while I say that I join
in the congratulations of my friend from Marion; except in so
far—which I suppose he did not intend—as his remarks imply
any reflection on me individually for mooting a subject here
which in my judgment as a representative in this Convention I see proper to moot. I hope, however, the gentleman intends no reflection on me personally.

Mr. Haymond: I intended nothing of the sort.

PERVERSION OF HISTORY.

In the "Sketch of the Formation of West Virginia" prefixed to Vol. I West Virginia Supreme Court Reports appears the following:

On the 14th of December, Mr. Battelle, a delegate from Ohio County offered a series of propositions designed to be engrafted into the Constitution in relation to African slavery that brought about great debate, which happily was sustained in a spirit of fairness and candor not always hitherto the accompaniment of the investigation of that singularly perplexing subject. * * * After a prolonged struggle, the propositions were defeated by a majority of one.

In the foregoing pages is given a verbatim report of all that was said and done in regard to Mr. Battelle's propositions. The debate could hardly be described as "great," nor the struggle as "prolonged." The prompt application of the gag forbade debate and cut short the struggle.

FORFEITED LANDS RELEASED.

The last subject to receive the attention of the Convention was wild lands, lying chiefly in the more mountainous and southern districts. Under the Virginia system these lands had been subject to entry by warrants sold at two cents per acre. The great body of them had long been held by speculators, who carried them along from year to year, or from decade to decade, and took advantage of every loophole in the laws to postpone or evade
the payment of the trifling taxes levied on them, the commonest trick being to neglect to have them entered on the land books so the taxes could be charged against them. It appears large areas of these lands forfeited to the State prior to 1832 were by legislative act in that year exonerated; and it appears also that through carelessness or intentional fraud many of these same lands were carried along for the succeeding twenty years in the same way. In April, 1852, an act was passed giving the owners until the first of July, 1853, to pay up, and forfeiting all lands not so paid for. Thus some lands were twice forfeited, in 1831 and again in 1853.

SCHOOLS ARE THE LOSERS.

The first proposition to deal with these lands in the Convention was submitted by Mr. Battelle in his report of provisions for the chapter on schools. He proposed to create a permanent school fund, for which he expected to get large accretions from sale of these forfeited lands. He proposed that all lands within the New State which had not been entered for taxation or upon which taxes had not been paid to the State of Virginia or West Virginia for a period exceeding five years should be "deemed and declared forfeited and forever irredeemable," and such forfeiture should not be released. This drag-net would have caught all the lands given away by the State (two cents an acre was giving away) to persons who had twice forfeited all right to them by either inexcusable carelessness or intentional dishonesty. Three days after this Mr. Smith of Logan proposed a substitute the effect of which
was to simply confirm the forfeitures in 1831. This was adopted. Some days later Mr. Brown of Kanawha offered a provision (also adopted) that "all lands vested in the State of Virginia may be redeemed by the former owner within five years after this Constitution goes into operation." This appeared to annul even the forfeiture proposed by Mr. Smith. Then the whole subject was referred to a special committee of which Mr. Harrison of Harrison was chairman, and the provisions reported by them were embodied in the constitution. These were in effect (1st) that the Legislature should provide for the sale of lands heretofore forfeited to the State of Virginia for failure to pay taxes charged, or for non-entry on the books, for the year 1831 or any previous year; (2) that lands returned delinquent and lands forfeited for non-entry, since 1831, where the taxes did not exceed $20, and tracts did not exceed 1,000 acres, were released and exonerated from forfeiture and delinquent taxes; (3rd) that lands theretofore vested in the State of Virginia by forfeiture or by purchase at sheriff's sale for delinquent taxes, and not released or exonerated by the laws of Virginia or under provisions of the 2nd clause preceding, could be redeemed within five years after the constitution became operative. These provisions, it will be seen, provided avenues through which about all these forfeited lands could be given back to the persons who had carried them thirty years without any payment of taxes, except where the tracts were larger than 1,000 acres and the taxes more than $20. It was even provided that where any forfeitures did occur and the lands were sold, all excess of the sale over the taxes, damages and costs should go back to the
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former owner. Thus it appears was lost to the schools nearly all of the munificent endowment Mr. Battelle had expected to secure from this source.

PARKER SAYS DISCRIMINATION.

The subject was one about which most members of the Convention except lawyers knew little. Mr. Parker of Cabell opposed the conclusions of the committee. He contended that where forfeitures had accrued under the legislation of Virginia, the title had been vested in that State and this Convention had no power to deal with such cases; that if in the face of this lack of authority the Convention should attempt to dispossess the State of these lands and give them back to the former owners, West Virginia would have to account for them to Virginia in the settlement between the two States. He complained also of the discrimination in releasing tracts under 1,000 acres where taxes did not exceed $20 and not releasing the larger tracts. The larger tracts, he said, generally belonged to non-resident owners; the smaller to persons nearly all of whom were at that time engaged in the Rebellion. The August ordinance had forbidden discrimination against non-residents in the matter of taxation, and this was a violation of that injunction. He protested against the scheme brought in by the committee as doing what the Convention had no power to do; "and if it had the power," he said, "the exercise of it in the manner proposed would be in the highest degree iniquitous and unjust." Mr. Parker was the agent for large landed interests belonging to non-resident owners. While the fact
may be held to impeach his disinterestedness, it does not necessarily impeach the truth or justice of his position. His relation to the subject had obliged him to make himself familiar with it and enabled him to see the operation of what was proposed, while others who had not made special study of the subject could not trace its intricacies.

A ZEALOUS ATTORNEY.

The member who appeared to be most zealous and most influential in shaping the action of the Convention in this matter was Col. Benjamin H. Smith, delegate from Logan. Colonel Smith was a resident of Charleston, and at that time U. S. District Attorney, a lawyer of ability and experience, and perhaps more familiar with the subject of Virginia wild lands than any other member of the Convention. He had been permitted to come in upon a petition signed by fifteen refugees, claiming to be from Logan County, who were at Camp Piatt, the headquarters of the 44th Ohio Regiment.

Several other members of the Convention held seats by credentials quite as slender as these, but none of them attempted to exercise such a controlling influence as Colonel Smith. He did not come into the Convention till late in the session, and all appearances indicated that he had sought admission to a seat only because of his interest in this subject.
It would exceed the limits set for this work to attempt even the briefest synopsis of all the debates in this Convention. The first sitting lasted eighty-five days. There were fluent talkers—and a few really able ones—among the members; a few broad-gauge, liberal-minded men, familiar and in sympathy with the best thought and purpose of the time; and such is the might of intelligence and of open, straightforward purpose that they, despite the narrowness, ignorance, pro-slavery virus and old-Virginiaisms of all kinds in the Convention, gave direction and in the main final shape to the instrument produced.

The loyalty of the State was declared in the first section of the first article: "The State of West Virginia shall be and remain one of the United States of America." The Virginia bill of rights was incorporated with its guaranties of religious liberty and freedom of speech and press; security of the citizen in his home; admission of the truth in the absence of malice as justification in defense of suits for libel. "Treason against the State" was recognized, punishment to be fixed by statute. The three departments of government—legislative, executive and judicial, were required to be separate, neither to exercise the powers of another, nor any person invested with the powers of two at the same time. Mr. Jefferson, the most eminent of all Virginia law-givers, it may be remarked, was so scrupulous about the observance of the separation of these three departments of government that when he became vice-president he declined to take part, as had been the custom down to that time, in the deliberations
of the cabinet, on the ground that he belonged to the legislative and had no right to participate in the executive functions. In that period, fresh from constitutional studies, public men gave much more consideration to this demarkation than now. Montesquieu ascribed the merits of the English constitution to its separation of these three functions, and no one principle, as essential to freedom, took such hold on the builders of our National Constitution. Mr. Jefferson regarded the concentration of these powers in the same hands as "the precise definition of despotism." Suffrage was limited to the "white male" citizens and a capitation of $1 required. The voting was to be by secret ballot and there was to be a registry of voters. There was to be no grant for extra compensation after work was done; dueling was punished by disability to hold office. Legislature to meet annually; sessions limited ordinarily to 45 days; members to receive $3 per day and 10 cents a mile; bills to be read on three separate days except in emergency. Governor's term to be two years, salary $2,000; other State officers: Secretary of State, Treasurer, Auditor and Attorney General. Judiciary to consist of circuit courts and Supreme Court; the latter to consist of three judges, at salary of $2,000 and term of twelve years. County officers to be: Sheriff, prosecuting attorney, surveyor, recorder and assessors. Civil jurisdiction of justices limited to $100. No county to have less than four hundred square miles area. Taxation to be "equal and uniform, all property, real and personal, to be taxed in proportion to its value" and "no one species of property to be taxed higher than any other of equal value." Creation of State debt forbidden, ex-
cept to meet casual deficits in revenue, to redeem a previous liability, suppress insurrection, repel invasion or defend the State in time of war. Credit of the State not to be granted to or in aid of any county, city, town, township, corporation or person, nor the State to become responsible for the debts or liabilities of such unless incurred in time of war for the benefit of the State. An “equitable proportion” of the Virginia debt prior to January 1, 1861, to be assumed, the Legislature to ascertain the same as soon as practicable and provide for its liquidation by a sinking-fund.

A general school fund was created from accretions to the State from sales of “forfeited, delinquent, waste and unappropriated lands;” from grants, devises or bequests to the State; from the State’s share of the literary fund of Virginia; from money, stocks or property which the State had a right to claim from Virginia for educational purposes; proceeds of estates where there was no will or heir; escheated lands; taxes levied on the revenues of corporations; moneys paid as exemption from military duty, and any appropriations to the fund which might be made by the Legislature. This fund was to be invested as it accrued and the interest only used to supplement local levies. The Legislature was required to provide for a thorough system of free common schools, with a State superintendent and county superintendents. Out of these provisions has grown a large permanent fund, for which the State has largely to thank Gordon Battelle, chairman of the Committee on Education. If Mr. Battelle could have had his wish, the school legacy of West Virginia would have been much larger.
Lotteries were forbidden, as was also the incorporation of any church or religious denomination. Circuit courts were allowed to grant divorces, change names and direct sales of the estates of minor or other incapable heirs. The Legislature might prohibit the traffic in intoxicating liquors; and it was required to provide by general laws for the creation of corporations. All special legislation was prohibited. Persons of color, slave or free, were forbidden to come into the State for permanent residence (but this provision was eliminated at the recalled session on requirement of Congress).

In the discussion on county organization, Mr. Van Winkle had quoted Jefferson, who declared: "Those wards, called townships in New England, are the vital principle of their governments and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation." The township system was adopted, the town supervisors to constitute the county fiscal board. This board, unlike the old Virginia "county court," was to exercise no judicial functions. A sufficiency of courts was provided for, and the county board of supervisors was to attend to fiscal business and exercise legislative functions only.

The one serious mistake in this constitution was in not providing for the early extinguishment of slavery. But the influence of the institution upon the minds of even liberal and intelligent men—as if it were an enshrined divinity in some "forbidden city," not to be touched by profane hands and to be spoken of only with bated breath—was one of the phenomena of the time.
The schedule provided for submitting the constitution to the people on the fourth Thursday in April. The commissioners were to certify the result to the Governor; and if the constitution should be adopted by the people, he was requested to lay the result before the Legislature and ask that body to consent to the separation; and to forward the evidence of such consent, if given, to the Congress of the United States, accompanied by an official copy of the constitution, with request that West Virginia be admitted as a State into the Union.

CONSTITUTION ADOPTED.

The vote on the constitution was 18,862 for and 514 against. The friends of a free State, under lead of the Intelligencer, disappointed by the refusal of the Convention to submit Mr. Battelle's emancipation proposition, advised the taking of an informal vote on the same, and in a number of counties this was done. The aggregate of the vote cast in this irregular and unauthorized way was over six thousand in favor of emancipation to a little over six hundred against it—ten to one. This was a surprising expression in view of the difficulties under which it was obtained.

LEGISLATURE CONSENTS TO DIVISION.

The General Assembly met May 6th, in response to call from the Governor; and on the 13th gave the formal consent of Virginia to the formation of the new State; and a certified copy of the formal consent, with a certified copy of the constitution, was forwarded to Washington and placed in the hands of Senator Willey.