CHAPTER XIX.

WEST VIRGINIA RUNS THE GAUNTLET OF THE HOUSE.

CONWAY, OF KANSAS, DELIVERS FIRST BLOW.

December 9th, 1862, the Senate bill for the admission of West Virginia was taken up as the order of the day in the House of Representatives. Hon. John A. Bingham, of Ohio, had charge of the bill and allotted the time for debate. The discussion ran through part of two days, but we will deal with it as if continuous.

"A SPONTANEOUS PRODUCTION."

Mr. Conway, of Kansas, was first to take the floor. He did not recognize the proposed division of Virginia as having received the assent of the Legislature which the Constitution requires. He referred to the reorganized State government as "a spontaneous production of the soil. A number of individuals met at Wheeling and, without any legal authority whatever, arranged a plan for a government." True, the President and the Senate had recognized this as the actual State of Virginia, but this was "of no binding force" on the House. He stated the argument in favor of the validity of this government as being: "that the original State of Virginia fell into treason and became only a void and caused a vacuum which could only
be filled in this way;” and then proceeded to argue against that proposition. He held that if the whole personnel abandoned its functions, the State organization falls and the sovereignty necessarily accrues to the United States.

**VIRGINIA REVERTS TO TERRITORY.**

The country assumes the condition of ordinary government territory. A State without a government is an impossibility. A State is that political organization of a community which invests it with a public faculty. “Where there is no government there is no State, but an incoherent mass.” * * * “The vacation of all the offices of a State * * * by any event not provided for in the Constitution, by which it would be left without agents to carry it on, would of course necessitate a failure. But this would be the end of the State. No man or set of men of their own will would be authorized to assume its functions. The territory would belong to the United States, as would any other territory which might fall into its possession through conquest, discovery or other cause.” In the case of the Dorr rebellion in Rhode Island, in 1842, the constitution of the State was obnoxious to the people and they adopted another and tried to set up another government. The President sent the military into Rhode Island and put down the revolt, and Dorr was sent to the penitentiary.

**BROWN CLAIMS CONSTITUTIONAL REGULARITY.**

Mr. Brown, of (West) Virginia, replied to Mr. Conway. He first quoted Section 3 of Article IV of the Constitution of the United States providing how new States
may be admitted. He referred to the admission of the territory of Kentucky, framed out of the territory of Virginia, as a precedent showing it was competent for Congress to admit a State formed within the jurisdiction of another State. He cited the fact that the Senate by the admission of the Senators had recognized the Wheeling Legislature as the Legislature of Virginia, and the House had done the same by the admission of members elected under writs issued by Governor Peirpoint. The Executive department of the United States government had recognized the Wheeling government by the payment to it of $41,000 held in the treasury as Virginia's share of the proceeds of public land sales. A State court in Ohio had recently recognized the Wheeling government as the State of Virginia, which had applied for a mandamus to compel a railroad company to assign $200,000 of bonds for the benefit of the State of Virginia. Mr. Brown then turned to the question of the original powers of the people. The principle was laid down in the Declaration of Independence that the legislative powers of the people cannot be annihilated; "that when the functionaries to whom they are entrusted become incapable of exercising them, they revert to the people, who have the right to exercise them in their primitive and original capacity." Referring to the turning over of Virginia to the Southern Confederacy, he said the people in the loyal counties of Western Virginia thus deprived of government, held county meetings and appointed delegates who met in Wheeling and provided for elections to fill vacancies in the Legislature caused by the withdrawal of disloyal representatives. These elections were held throughout Virginia wherever
the people chose to hold them. He denied the power of a State to secede. Although Virginia could not commit treason, her functionaries might, and leave the legislative and executive power with the people to whom they originally and primitively belonged. The revenue in the territory covered by West Virginia, as fixed by the auditor of Virginia in 1859, was $620,061. The people of Western Virginia, said Mr. Brown, were on the point of revolution in 1829-30, when Eastern Virginia yielded a small pittance of the power to them. "In 1850 we were again upon the point of revolution because we were denied our proper representation in the Legislature. They yielded to us our proper representation in the House but denied it to us in the Senate. As an equivalent for this concession, they retained the provision that the Legislature should not tax negroes under twelve years old. The remaining portion of the negro population was only taxed as property at $300 while every article of our property was taxed to its full value. We protested against it; but we were powerless because they had retained in the Legislature an undue proportion of the representative power."

**COLFAX SECONDS HIM.**

Mr. Colfax following, referred to the several departments of the government which had recognized the Restored State government at Wheeling. The War Department had recognized Governor Peirpoint's commissions to the officers of the volunteer regiments of Virginia as commissions emanating from rightful and legal authority; the Secretary of the Interior in giving notice of the congressional apportionment under the census of 1860, had
done the same. The House of Representatives by the admission of Mr. Blair from the Parkersburg district and Mr. Segar from the district around Fortress Monroe, elected under writs issued by Governor Peirpoint, had done the same.

Mr. Olin denied the validity of the position taken by Mr. Conway, that the area of a seceded State—it being denied that secession could take place—could be thrown into a territory and governed by Congress the same as other territories.

CONWAY CLAIMS BELLIGERENT RIGHTS FOR CONFEDERACY.

Mr. Conway, in subsequent explanation, said that while secession was unlawful, a State could be released from its obligation to the Federal government by revolution. * * * “These rebellious States have acquired a belligerent character which gives them international status, which is entirely incompatible with the Federal status. They are beyond the Federal system. These States stand where they may be regarded by us as a foreign power and where we can make war upon them as on a foreign power.” He maintained, therefore, that Western Virginia had fallen into our possession by conquest, and it was within our power to govern that people as a military dependency. He regretted they did not institute a territorial government there in the beginning of the war.

PEOPLE BETTER THAN POLITICIANS IN WEST VIRGINIA.

Mr. Hutchins, referring to the question of slavery in the new State and quoting the gradual emancipation clause in the bill, remarked that “the people were better than
the politicians in West Virginia;" for though the Con­
vention had failed to submit to the people the question
whether they would abolish slavery, the people themselves,
without being invited to do so and without any form of
law to that effect, had by a large majority voted against
slavery.

Mr. Crittenden argued that the government at Wheel­
ing was not the State of Virginia.

Mr. Edwards said there was no legal Legislature or
government in Virginia after that government put itself
in the attitude of rebellion against the government of the
United States. A Convention of the whole people of Vir­
ginia was called at Wheeling; which Convention framed
a government for the State; and the legislative branch of
the government thus established had given its consent to
the division.

Horace Maynard spoke at length in favor of admission
and in defense of the legality of the proceedings that had
led up to this application.

THAD. STEVENS' UNIQUE POSITION.

Thaddeus Stevens announced his purpose to vote for
the bill; but he was not "deluded," he said, "by the idea
that we are admitting this State in pursuance of the Con­
stitution of the United States." It was "a mockery" to
say that the Legislature of Virginia had consented. He
regarded the secession of the State as treason on the part
of individuals; but so far as the municipality or corpora­
tion was concerned, it was a valid act and governed the
State. "The majority of the people of Virginia was the
State of Virginia, although individuals had committed treason." He held, therefore, that the State of Virginia had never given its consent; but they might admit West Virginia "not by virtue of any provision of the Constitution of the United States but under our absolute power which the laws of war give us in the circumstances in which we are placed." He should vote for the bill on that theory and that alone. He declared the Union never could be restored as it was; with his consent it never should be restored with slavery to be protected by it. He was in favor of admitting West Virginia because she came with a provision which would make her a free State, and because he had confidence in the people of West Virginia and in the worth of the men sent here to represent them.

BINGHAM'S MASTERLY PRESENTATION.

Mr. Bingham closed the debate. He began by saying that if the theory of those who, like Conway and Stevens, held that Virginia had simply been reduced to the condition of a territory was good, all constitutional objection to the admission of West Virginia was swept away. For there were too many precedents to claim that a territory which had framed its own constitution could not be admitted without an enabling act. He referred particularly to Michigan and Tennessee.

He next noticed the position taken by Segar, of (East) Virginia, who had denied that the reorganized government at Wheeling was constitutional or legal. Yet Segar had been chosen to his seat in this House at an election held
under a writ issued by Governor Peirpoint; and in impeaching Peirpoint's authority, he was simply impeaching his own title to a seat in this body.

On the question of the rightfulness of that reorganized government, he said those people in a State who organize treason against the United States are not any part of the State. The people of a State have a right to local government. It is essential to their existence, and they can have it only under State authority. It cannot be afforded them by the Federal government. The minority of those people could not by the treason of a majority be stripped of their right to protection within the State by State laws. If the majority in Virginia had turned rebel, the State was in the loyal minority; who have the right to administer the laws and maintain the authority of the State government; and to that end to elect a State Legislature and Executive by which they may call upon the Federal government for the protection "against domestic violence" guaranteed by the Constitution. In such event, the majority being rebels must submit to the law of the minority if enforced by the power of the National government. This was no new idea. In confirmation, he referred to a letter addressed by Mr. Madison to the American people, wherein he discussed the fourth section of Article IV of the Constitution which provides for that guaranty. Mr. Madison foretold that it might come to pass that the majority of the people of a State might conspire together to sweep away the rights of the minority as citizens of the United States. In that paper Mr. Madison says:

Why may not illicit combinations for purposes of violence be formed as well by a majority of a State as by a majority of a
county or district of the same State? And if the authority of the State ought in the latter case to protect the local magistracy, ought not the Federal Government in the former to support the State authority?

This was precisely the condition of things in Virginia. The majority had become traitors. The representatives whom the people had elected, who were required by the existing constitution of Virginia as well as by the Federal Constitution to take an oath to support the Constitution of the United States, when they foreswore themselves and entered into a deliberate bargain and sale with Vice President Stephens of the Southern Confederacy, surrendered all right to represent any part of the people of Virginia. In this state of things, according to the logic of some gentlemen, the people of Virginia could have no legislation. He appealed to the principle affirmed in the Declaration of Independence that "the legislative powers, incapable of annihilation, have returned to the people at large for their exercise." No matter who turns traitor, the legislative powers are incapable of annihilation. The power remained with the loyal people of Virginia to call a convention and reinstate their government. The members of the Legislature elected on the 23d of May adhering to the United States and meeting at Wheeling, were the Legislature of Virginia. Those of them who took the road to Richmond never became a part of the Legislature of Virginia at all.

The ultimate power, Mr. Bingham said, to decide between the two bodies which was the rightful Legislature was in the Congress of the United States; and it was competent for Congress to say that not a man of those who...
refused to take the oath prescribed by the Federal Constitution and who did take the oath of that treasonable conspiracy at Richmond, ever became a member of the Legislature of the State of Virginia. He referred to the case of Luther vs. Borden, the Rhode Island case of 1842. Rhode Island had been in revolution. Two opposing governments had been in operation. Who should decide which was the lawful government? The case finally went to the Supreme Court of the United States, and Chief Justice Taney in delivering the opinion of the court said that it was a political question and that the decision of it by the Federal Executive under the authority of Congress was binding on the judiciary. Taney also said the power to decide which of two governments in a State is the true government is in Congress. If Congress should now decide that the people of Western Virginia had no right to maintain the government they had established, under which this application had been made for the admission of a new State, all that remained would be for the Executive to follow their example and leave that people to their fate. Such a decision by Congress would bind the judiciary to hold the legislation of that people for the protection of their lives and property void. It would bind the judiciary of the State itself and everybody appointed by the Executive to execute the laws within that State; and the effect would be to say that inasmuch as the majority have taken up arms against the government of the United States and of Virginia, the loyal minority are without the protection of local State law; that their representatives duly elected and qualified are not and cannot be called the Legislature of Virginia.
Mr. Bingham thought he had said enough to show that the Legislature which assembled at Wheeling was the Legislature of the State of Virginia; and that it remained with this body alone to determine whether they should be recognized as such. "If you affirm it is," he said, "there is no appeal from your decision. I am ready to affirm it, and upon the distinct ground that I do recognize, in the language of Mr. Madison, even the right of a minority in a revolted State to be protected under the Federal Constitution by both Federal and State law."

Discussing the question of expediency, Mr. Bingham said:

I fear that the chief objection at last to the organization of this New State and its admission into the Union, however gentlemen may disguise their thoughts and shrink from a manly avowal of them, is not that there is any constitutional objection to it—that there is anything inexpedient in it when you take into consideration the whole interests of the whole people of the Republic—but simply that it is an inroad, which will become permanent and enduring if you pass this bill, into that ancient Bastile of slavery, out of which has come this wild, horrid conflict of arms which stains this distracted land of ours this day with the blood of our children.

He trusted the bill would pass, because he had an abiding confidence in the people who were asking for this admission that they would not only ratify the condition for gradual emancipation, but would speedily avail themselves in their legislation of the opportunity presented to them by the President's proclamation to inaugurate immediate or ultimate emancipation for every slave within the State.
If Congress refused to pass the bill and Virginia attempted by their present Legislature to adopt the emancipation policy of the President, the argument would be thrown back into their faces that by the decision of Congress it was not the Legislature of Virginia and had no power to consent to the proclamation of the President.

The hour for closing debate having arrived, the bill was read the third time and passed by a vote of 96 to 55.