CHAPTER XX.

IN THE HANDS OF THE PRESIDENT.

MR. LINCOLN ADVISES WITH CABINET.

The bill for the admission of West Virginia went to the President. December 23rd he asked his Cabinet advisers for written opinions on two questions regarding the act of admission:

First, Is the act constitutional?
Second, Is it expedient?

West Virginia had come to this last door, and all that had been done up to this point would be fruitless unless the President opened it. All the steps required by the constitutional prescription had been taken with careful conformity; but all this went for nothing if the President should in the end refuse his approval; for it would have been hopeless to attempt to carry the measure through the two houses again against his judgment.

PEIRPOINT SENDS A MESSAGE.

Before we come to the Cabinet opinions and Mr. Lincoln's own opinion, let us note a statement made by Governor Peirpoint touching his part in contributing to the reasons which decided the President to approve the act.
About the last days of December, James W. Paxton, Edward M. Norton and A. W. Campbell went to Governor Peirpoint at his office in the Wheeling Custom House to confer with him on the anxious situation. It was agreed that the Governor should wire Mr. Lincoln urging him to sign the bill. Mr. Campbell sat down at the table and wrote the message as agreed on. Governor Peirpoint told Mr. Campbell as late as 1897 that Mr. Lincoln had said to him that this message had decided him to sign the bill. The precise wording of a message having such a result would be of unusual interest to West Virginians as a historical fact. All four of the men who shared in sending it are dead, and it seems certain no copy was kept. A letter to President McKinley's secretary, to ask if it would be possible to find the telegram in the files of the Executive office, brought courteous reply from Mr. Cortelyou that he was informed files of the President's correspondence were not at that period kept at the Executive mansion, and that after Mr. Lincoln's death all papers remaining there were distributed among the departments. Colonel Hay, Secretary of State, had been one of Mr. Lincoln's secretaries; and thinking it possible he might be able to suggest in what department the paper could be found, I addressed an inquiry to him. This brought reply from Mr. John G. Nicolay (another of Mr. Lincoln's assistants, and collaborator with Colonel Hay on their book "Abraham Lincoln"), who wrote that he had no recollection of such a telegram; that if received "it ought to be among the Lincoln papers; but after examination," he says, "I do not find it among such as we have." "I think," Mr. Nicolay adds, "that Governor Peirpoint's recollection must be at
fault if he stated that Mr. Lincoln had told him he had signed the West Virginia bill merely because of the Governor's request.

THE GOVERNOR'S DAUGHTER TELLS ABOUT IT.

Not feeling convinced by Mr. Nicolay's conclusion, I made some inquiry of Governor Peirpoint's daughter, Mrs. Anna Peirpoint Siviter, of Pittsburgh, who wrote me under date of February 16, 1901, the following:

Father's memory was absolutely faultless to the day of his death except a few weeks at the beginning of his illness at Fairmont; and I have heard him tell the story many times substantially as you tell it and know it was true. The only point I am not certain of is whether it was a letter or telegram that was sent. My brother was in the room at the time the conversation took place between my father and Mr. Campbell in 1897 concerning the sending of the telegram and Mr. Campbell as well as my father remembered the occurrence. This adds Mr. Campbell's evidence to my father's that such a message was sent. But even if I had not heard either of them make this statement, I should know it was true from a conversation I had with Senator Willey the day after my father's funeral, in March, 1899. He told me the whole history of President Lincoln's signing the bill. Mr. Willey was intensely anxious to obtain the President's signature at once and visited the White House in company with another gentleman. The President asked them to see the different members of the Cabinet and return to him the following morning (possibly a day later), when he would make known his decision. They went to see the Cabinet, and on the day set went to the White House so early that the servants were still cleaning the President's private office. They forced their way in, however, and in a few minutes the President appeared, and after making some laughing remark about their early appearance, he told them he was ready for them; and, stooping down, took out a bundle of papers from the drawer of his desk, stating that they contained the written
opinions of the members of the Cabinet. The effect of the President's comment on these opinions was that they were not so unanimous as to lead him to sign the bill; "but," he continued, "I have another paper here which has had a great influence upon me and I will read it to you." He then drew out and read to them a message which they knew was my father's; "and this," Mr. Lincoln said, "was the cause of my doing this" (or words to that effect). And then he showed his signature to the bill.

I suppose you know the substance of the dispatch. It was that whether the act was constitutional or not, the New State must be created. It was a war measure. The Union was engaged in a life-and-death struggle, and the bill must be signed.

"ARCHIE" CAMPBELL INTERVIEWS MR. LINCOLN.

Regarding this message to the President, Mr. Campbell's daughter, Mrs. Jessie Campbell Nave, of Bethany, West Virginia, in answer to my inquiries, wrote me under date of August 15, 1901:

Father had more to do with this than any one else; and it was he who virtually wrote the message, for that I have known this many a year. And, furthermore, father went on himself and had a personal interview with Mr. Lincoln, who came into father's room in the hotel while he was performing his ablutions and took a seat on a chair in the most off-hand way, asking father to explain the whole case to him—which you can imagine he did thoroughly.

Corrective of this, Mrs. Nave wrote me in a letter dated December 2, 1901:

I forgot to tell you further of father's interview with Lincoln. I had nothing bearing on the subject in my possession, only Mr. Nave and I had listened with interest to father's account of his trip to Springfield, Ill., to see the President and enlighten him as to the true state of affairs then existing in the western part of Virginia. Mr. Lincoln surprised father at his ablutions in his modest apartments in what was doubtless a
very second-rate hostelry, for in those days the United States could boast few good hotels. I think I told you when I wrote you about the matter before that the meeting took place in Washington, but, talking it over with Mr. Nave, I find it was in Springfield, Ill.

Mr. Willey’s statement, as given by Mrs. Siviter, differs in some detail from that printed by Hon. J. B. Blair in the *Wheeling Intelligencer* in 1876. That statement (copied elsewhere), touching the visit to the President and the reading of the Cabinet opinions, does not mention any other paper. According to Mr. Blair, the bill was not exhibited with the President’s signature at that visit, but later, on New Year’s morning, when Mr. Blair called on the President by himself. On this point, Mr. Blair’s account is confirmed by Granville Parker’s report of what Mr. Blair told him at Washington soon after.

A careful reading of Mr. Lincoln’s deciding opinion, printed in succeeding pages, shows that the considerations suggested in Governor Peirpoint’s message coincided closely with the drift of his own conclusions. How much the suggestions may have influenced those conclusions, the reader will judge with all the available facts before him.

Mr. Nicolay kindly offered to have full copies of these Cabinet opinions made for me, but the limits set for this work not permitting to any extent the printing of documents in extenso, I have used only the extracts necessary to give the substance of them as found in Vol. VI of Nicolay and Hay’s “Abraham Lincoln.” Mr. Lincoln’s own deciding opinion is reproduced in full. To West Virginia people this paper is of especial interest. It gives President Lincoln one more strong claim to their gratitude, and their admiration, for we see how easily his grasp of the question
sweeps away the trivialities woven around it by Welles, Blair and Bates, and how he gets right at the heart of the controversy in the simple and masterful way peculiar to him.

CABINET EVENLY DIVIDED.

Mr. Seward: The political body which has given consent is incontestably the State of Virginia. So long as the United States do not recognize the secession, departure or separation of one of the States, that State must be deemed as existing and having a constitutional place within the Union, whatever may be at any moment exactly its revolutionary condition. A State thus constituted cannot be deemed to be divided into two or more States simply by any revolutionary proceeding which may have occurred, because there cannot be constitutionally two or more States of Virginia. * * * The newly organized State of Virginia is therefore at this moment by the express consent of the United States invested with all of the rights of the State of Virginia and charged with all the powers, privileges and dignities of that State. If the United States allow to that organization any of these rights, powers and privileges it must be allowed to possess and enjoy them all. If it be a State competent to be represented in Congress and bound to pay taxes, it is a State competent to give the required consent of the State to the formation and erection of the new State of West Virginia within the jurisdiction of Virginia.

On the question of expediency, Mr. Seward said: "The first duty of the United States is protection to loyalty wherever it is found." He was of opinion also that "the harmony and peace of the Union will be promoted by allowing the New State to be formed and erected which will assume jurisdiction over that part of the valley of the Ohio which lies on the south side of the river, displacing in a constitutional and lawful manner the jurisdiction heretofore exercised by a political power concentrated at the head of the James River."
Mr. Chase: In every case of insurrection involving the persons exercising the power of the State, when a large body of the people remain faithful, that body so far as the Union is concerned must be taken to constitute the State. It does not admit of doubt that the Legislature which gave its consent to the formation and erection of the State of West Virginia was the true and only lawful Legislature of the State of Virginia. The Madison papers clearly show that the consent of the Legislature of the original State was the only consent required to the erection and formation of a new State within its jurisdiction. * * * Nothing required by the Constitution to the formation and admission of West Virginia is therefore wanting; and the act of admission must necessarily be constitutional. Nor is this conclusion technical as some may think. The legislature of Virginia, it may be admitted, did not contain many members from the Eastern counties. It contained however, representatives from all counties whose inhabitants were not either rebels themselves or dominated by greater numbers of rebels. It was the only Legislature of the State known to the Union. If its consent was not valid, no consent could be. If its consent was not valid the Constitution as to the people of West Virginia had been so suspended by the rebellion that a most important right under it is utterly lost.

The act is almost universally regarded as of vital importance to their welfare by the loyal people most immediately interested, and it has received the sanction of large majorities in both houses of Congress. These facts afford strong presumptions of expediency.

Mr. Stanton: I have been unable to perceive any point on which the act of Congress conflicts with the Constitution. By the erection of the New State the geographical boundary heretofore existing between the free and slave States will be broken; and the advantage of this from every point of consideration surpasses all objections which have occurred to me on the question of expediency.

Mr. Welles: We cannot close our eyes to the fact that the fragment of the State which in the revolutionary tumult has instituted a new organization is not possessed of the records,
archives, symbols, traditions or capital of the Commonwealth. Though calling itself the State of Virginia, it does not assume the debts and obligations contracted prior to the existing difficulties. Is this organization then really and in point of fact anything else than a provisional government for the State? It is composed almost entirely of those loyal citizens who reside beyond the mountains and within the prescribed limits of the proposed new State. In this revolutionary period, there being no contestants, we are compelled to recognize the organization as Virginia. Whether that would be the case and how the question would be met and disposed of were the insurrection this day abandoned, need not now be discussed. Were Virginia, or those parts of it not included in the proposed new State, invaded and held in temporary subjection by a foreign enemy instead of insurgents, the fragment of territory and population which should successfully repel the enemy and adhere to the Union would doubtless during such temporary subjection be recognized, and properly recognized, as Virginia. When, however, this loyal fragment goes farther and not only declares itself to be Virginia but proceeds by its own act to detach itself permanently and forever from the Commonwealth and to erect itself into a new State within the jurisdiction of the State of Virginia the question arises whether this proceeding is regular, legal, right and in honest good faith comformable to and within the letter and spirit of the Constitution. * * * Were there no question of doubtful constitutionality, the time selected for the division of the State is most inopportune. It is a period of civil commotion, when unity and concerted action on the part of all loyal citizens should be directed to a restoration of the Union and all tendency towards disintegration and demoralization avoided.

Mr. Blair: The question is only whether the State of Virginia has consented. In point of fact it will not be contended that this has been done; for it is well known that the elections by which the movement has been made did not take place in more than one-third of the counties of the State, and the votes on the constitution did not exceed twenty thousand. The argument for the fulfillment of the constitutional provisions applicable to this case rests altogether on the fact that the government organized at Wheeling (in which a portion of the district in which it is proposed to create the new State is represented
with a few of the Eastern counties) has been recognized as the government of the State of Virginia for certain purposes by the executive and legislative branches of the Federal government; and it is contended that by these acts the Federal government is estopped from denying that the consent given by this government of Virginia to the creation of the New State is a sufficient consent within the meaning of the Constitution. It seems to me to be a sufficient answer to this argument to say: first, that it is confessedly merely technical and assumes unwarrantably that the qualified recognition which has been given to the Government at Wheeling for certain temporary purposes precludes the Federal government from taking notice of the fact that the Wheeling government represents much less than half the people of Virginia when it attempts to dismember the State permanently. Or, second, that the present demand of itself proves the previous recognitions relied on to enforce it to be erroneous. For unquestionably the fourth article of the Constitution prohibits the formation of a new State within the jurisdiction of an old one without the actual consent of the old State; and if it be true that we have so dealt with a third part of the people of Virginia as that to be sustained we should now permit that minority to divide the State, it does not follow that we should persist, but on the contrary it demonstrates that we have heretofore been wrong; and if consistency is insisted on and is deemed necessary, we should recede from the position heretofore taken.

As to the expediency of the measure, I do not think it either necessary to recede from those positions or proper to take the new step insisted on now.

The opinion of Mr. Bates was lengthy and elaborate. The following extract will indicate the course of his argument:

Mr. Bates: We all know—everybody knows—that the government of Virginia recognized by Congress and the President is a government of necessity, formed by that power which lies dormant in every people, which though known and recognized is never regulated by law because its exact uses and the occasions for its use cannot be foreknown, and it is called into
exercise by the great emergency which overturning the regular
government necessitates its action without waiting for the de-
tails and forms which all regular governments have. It is in-
tended only to counteract the treacherous perversion of the
ordained powers of the State and stands only as a political
nucleus around which the shattered elements of the old Com-
monwealth may meet and combine in all its original proportions
and be restored to its original place in the Union. It is a
provisional government proper and necessary for the legitimate
object for which it was made and recognized. That object was
not to divide and destroy the State, but to rehabilitate and
restore it. That Government of Virginia, so formed and so
recognized, does not and never did in fact represent and govern
more than a small fraction of the State—perhaps a fourth part.
And the Legislature which pretends to give the consent of Vir-
ginia to her own dismemberment is (I am credibly informed)
composed chiefly if not entirely of men who represent those
forty-eight counties which constitute the new State of West
Virginia. The act of consent is less in the nature of a law
than of a contract. It is a grant of power; an agreement to be
divided. And who made the agreement? The representatives
of the forty-eight counties with themselves. Is that fair deal-
ing? Is that honest legislation? Is that a legitimate exercise
of a constitutional power by the legislature of Virginia? It
seems to me that it is a mere abuse, nothing less than an at-
tempted secession, hardly valid under the flimsy forms of
law.

MR. LINCOLN UNANIMOUS.

When Mr. Lincoln had weighed the opinions, pro and
con, thus furnished him, he found reasons of his own to
justify him in signing the bill, and he put them on paper
as a sort of deciding opinion in the case:

The consent of the Legislature is constitutionally necessary
to the bill for the admission of West Virginia becoming a law.
A body claiming to be such Legislature has given its consent.
We cannot well deny that it is such unless we do so upon the
outside knowledge that the body was chosen at elections in
which a majority of the qualified voters of Virginia did not participate. But it is a universal practice in popular elections in all these States to give no legal consideration whatever to those who do not choose to vote as against the effect of the votes of those who do choose to vote. Hence it is—not the qualified voters but the qualified voters who choose to vote that constitute the political power of the State. Much less than to non-voters should any consideration be given to those who did not vote in this case; because it is also a matter of outside knowledge that they were not merely neglectful of their rights under and duty to this government, but were also engaged in open rebellion against it. Doubtless among these non-voters were some Union men whose voices were smothered by the more numerous Secessionists; but we know too little of their number to assign them any appreciable value. Can this government stand if it indulges constitutional constructions by which men in open rebellion against it are to be counted, man for man, the equals of those who maintain their loyalty to it? Are they to be counted better citizens and more worthy of consideration than those who simply neglect to vote? If so their treason against the Constitution enhances their constitutional value. Without braving these absurd conclusions, we cannot deny that the body which consents to the admission of West Virginia is the Legislature of Virginia. I do not think the plural form of the word "legislatures" and "states" in the phrase of the Constitution "without consent of the Legislatures and of the States concerned," etc., has any reference to the New State concerned. That plural form sprang from the contemplation of two or more old States contributing to form a new one. The idea that the New State was in danger of being admitted without its own consent was not provided against because it was not thought of, as I conceive. It is said the devil takes care of his own. Much more should a good spirit—the spirit of the Constitution and the Union—take care of its own. I think it cannot do less and live.

But is the admission of West Virginia into the Union expedient? This in my general view is more a question for Congress than for the Executive. Still, I do not evade it. More than on anything else it depends on whether the admission or rejection of the New State would, under all the circumstances,
tend the more strongly to the restoration of the National authority throughout the Union. That which helps most in this direction is the most expedient at this time. Doubtless those remaining in Virginia would return to the Union, so to speak, less reluctantly without the division of the old State, than with it; but I think we could not save as much in this quarter by rejecting the New State as we should lose by it in West Virginia. We can scarce dispense with the aid of West Virginia in this struggle; much less can we afford to have her against us in Congress and in the field. Her brave and good men regard her admission into the Union as a matter of life and death. They have been true to the Union under very severe trials. We have so acted as to justify their hopes and we cannot fully retain their confidence and co-operation if we seem to break faith with them. In fact they could not do so much for us if they would.

Again, the admission of the New State turns that much slave soil to free; and this is a certain and irrevocable encroachment upon the cause of the rebellion.

The division of the State is dreaded as a precedent. But a measure made expedient by war is no precedent for times of peace. It is said that the admission of West Virginia is secession and tolerated only because it is our secession. Well, if we call it by that name there is still difference enough between secession against the Constitution and secession in favor of the Constitution. I believe the admission of West Virginia into the Union is expedient.

THE SIGNING OF THE BILL.

Granville Parker relates that happening to be East on private business and gathering from the papers "the critical situation at Washington," he went thither on the last day of December and that evening called upon Hon. J. B. Blair, congressman from the Parkersburg district. Mr. Blair informed him he had just come from the President, who had told him "to call next morning and receive a New Year's gift." "In the morning," says Mr. Parker,
“Mr. Blair, as he afterwards told me, called at the Presidential mansion before the doors were open, went in at a window and met the President, who had just got up. He went immediately to a drawer and took out and showed Mr. Blair the bill for the admission of West Virginia, with his signature affixed, as the New Year’s gift he had promised; manifesting the simplicity and joyousness of a child when it feels it has done its duty and gratified a friend.”

HOW PRESIDENT LINCOLN GAVE THE “ODD TRICK.”

In a letter published in the Wheeling Intelligencer January 22, 1876, Mr. Blair relates that when the bill was Va.—33
in the hands of the President, accompanied by his colleague in the House, Hon. William G. Brown, and Senator Willey, he called upon the President in the interest of admission, and he describes what occurred as follows:

We had hardly taken our seats when Mr. Lincoln remarked that he was glad we had called as he wished to talk with us as to the constitutionality and expediency of creating the proposed New State out of a part of the State of Virginia. Without waiting for reply he went on to say that he had consulted his Cabinet on the above points, that he had their opinions in writing, that he would read them to us but would not tell us which was which. Friend Brown just then got in a word and remarked that he thought we would be able to tell whose opinion he read. We did so in every instance. He had the written opinion of every member of his Cabinet save that of Mr. Smith. Mr. Seward, Mr. Chase and Mr. Stanton were for us; Mr. Welles, Mr. Blair and Mr. Bates were against us.

The President then pulled out a drawer in the table by which he was sitting with the remark: “Now, gentlemen, I will give you the “odd trick;” and I remarked “that is the trick we hope to take.” One thing I do know that we three agreed afterwards that Mr. Lincoln’s argument was the clearest, most pointed and conclusive of all. Above all, it was most satisfactory to us. We went at seven o’clock and left at ten. Just as we were leaving I obtained a promise from him that notwithstanding the next day was New Year’s day, when the President received no visitors on business, that if I would come up early he would let Mr. Brown know whether he had approved our bill or not. I was there early in the morning and he kept his promise—as he always did. He brought the bill to me and holding it open before my eyes, he said: “You see the signature.” I read: “Approved—Abraham Lincoln.”