CHAPTER XXI.

AMENDMENT MADE AND RATIFIED—WEST VIRGINIA INAUGURATED.

THE CONSTITUTION COMES BACK.

January 14, 1863, the Schedule Commissioners issued a proclamation recalling the Constitutional Convention and ordering elections in Greenbrier, Monroe, Morgan, Pendleton and Pocahontas Counties, not before represented, and to fill vacancies:

In Ohio County, caused by the death of Gordon Battelle.

In Marion, by the resignation of Hiram Haymond.

In Mason, by the resignation of John Hall.

In Kanawha, by the resignation of James H. Brown.

The Convention reassembled in its former meeting-place at 11 A.M., February 12, 1863. Daniel Lamb was called to the temporary chair and Abraham D. Soper, a venerable looking white-haired man of 66 was made permanent President. The following new members appeared, most of them at the opening of the session: Andrew F. Ross, Ohio County; James H. Brown, Kanawha (who had changed his mind and came back); Moses Tichenal,
Marion; Dr. David S. Pinnell, Upshur; Joseph S. Wheat, Morgan; D. W. Gibson, Pocahontas; Andrew W. Mann, Greenbrier.

Immediately upon the opening the first day, the commissioners submitted their report including the passage of the act of admission with an amendment, to confirm which this Convention had been recalled.

DEATH OF GORDON BATTELLE.

Announcement of the death of Gordon Battelle while serving as chaplain of the 1st Union Virginia Regiment, was made by Mr. Lamb, who briefly eulogized his deceased colleague and offered resolutions of respect and condolence. Several members followed Mr. Lamb in feeling tributes to their late associate, testifying to his high personal character, his valuable services in the Convention and the noble devotion to his country which cost him his life. One could not, while listening to these addresses, but reflect on the irony of fate. Gordon Battelle was the one man who might have been excused some satisfaction in the resuming of this Convention. Congress had refused admission until the gradual emancipation he had sought to have incorporated should be put into the constitution. He had been gagged on the floor of the Convention on the motion of one of the commissioners who carried their unacceptable work to Washington—denied permission to give his reasons; and now the Convention after a year's delay was brought back to repair the omission; and the one man whose judgment had been vindicated was the one man chosen not to be here to receive this meed of justice.
"CONGRESSIONAL DICTATION" FOR HOME CONSUMPTION.

In the afternoon the Convention was addressed at length by Senator Willey, who had brought a written address from Washington to show why West Virginia should accept the condition imposed by Congress. The argument was superfluous, as all well-informed people knew. Outside a few politicians, now eager to get on the winning side, the people of West Virginia did not care a fig about the cry of "congressional dictation." All they wanted was a chance to vote for a free State. Mr. Willey was not unwilling to make a little capital for himself, first by taking all the credit of the emancipation amendment—which the record of the Senate debates shows he declared was "not personally agreeable" to him but which he was forced to stand sponsor for—and next at the expense of his unfaithful colleague. After reciting precedents and opinions to show that Congress had the right to impose conditions, he finally came down to Mr. Carlile saying: "I am happy, however, to be able to add to these high authorities that of my able colleague. I have here the original bill reported by the Committee on Territories for the admission of West Virginia into the Union, drawn by Mr. Carlile. That it was the mature result of Mr. Carlile's enlightened judgment there can be no doubt;" and then he quoted the sarcastic remarks Mr. Wade had made regarding Mr. Carlile's course in the committee. This was keen on the part of Mr. Willey, but a little explanation of his own indifference and failure to uncover Mr. Carlile's Trojan horse, instead of leaving it to be done by others, might have been in better taste.
In the second day's session, Mr. Van Winkle offered for reference to a special committee a resolution to engraft on the constitution the provision required by Congress. The committee were directed to inquire whether any provision in reference to the compensation of owners should or could with propriety be inserted in the constitution or adopted by the Convention. Mr. Brown, of Kanawha, the special champion of the slave-holding interests, offered a resolution declaring that "the clause ratifying and accepting the constitution prescribed by Congress ought also to contain a provision requiring the Legislature to make compensation to the loyal owners whose slaves shall be emancipated thereby, or at least be accompanied by an explicit and positive declaration that the ratification and adoption of said condition shall not be construed as changing in any degree the 6th section of the constitution." That section provided that "Private property shall not be taken for public use without just compensation. No person in time of peace shall be deprived of life, liberty or property without due process of law."

COMMITTEE REPORT ON IT.

The special committee was composed of Van Winkle, Willey, Brown, of Kanawha, Lamb and Parker; and the following day Mr. Van Winkle submitted their report. The committee had been unable to learn that any State had emancipated slaves in being at the time of passing the emancipation law. "It is conceded on all hands," the report said, "that no prospective or other right of property
attaches to the children of slave mothers until actually born, who cannot therefore be subjects of emancipation.” The committee found no precedent in this country to serve as guide in forming their opinions as to whether the owners of slaves in being at the time the constitution goes into operation and then under the age of twenty-one years, should be compensated for their slaves. In colonies of England, France, Denmark and Holland, emancipation of slaves had been accompanied by compensation to owners; and in the liberation of the Russian serfs, the Emperor had provided for compensation to owners of the lands to which they were attached and to whom their services were due. Regarding the constitutional provision quoted, that private property should not be taken—which same provision is found in the Constitution of the United States—the committee proceeded to inquire to what extent these provisions were applicable to the present case. They thought slaves and the right to their service constituted such property as was contemplated in this provision, and concluded that freeing slaves was equivalent to taking the property “for public use;” and that therefore the owners of slaves in being at the time the constitution goes into operation and emancipated under it would be entitled to compensation. The details of this would be matter for the Legislature. The committee did not, however, recommend any alteration beyond that required by Congress. They accompanied their report with a resolution expressing the opinion “that the owners of slaves in being at the time the constitution goes into effect and emancipated under its provisions will be constitutionally and legally entitled to recover from the State the actual value of such slaves at the time of emancipation.”
Later, Mr. Brown, of Kanawha, offered a resolution requesting Congress to appropriate $2,000,000 to the State of West Virginia, to be paid in United States 6 per cent. bonds on the passage of an act abolishing slavery within the first year after the establishment of the State and making compensation to owners.

The debates on this question of compensation were the most considerable that engaged the attention of the Convention during its sitting.

On the 17th the resolutions reported by the special committee on the subject of compensation were taken up and Mr. Willey offered in lieu of them one declaring it the opinion of the Convention that "every right of every kind of property is amply provided for and secured by the constitution as it stands," and that no amendment was necessary or proper. Mr. Wheat had offered an amendment to the committee's resolution providing that the appropriation for the compensation should be "made from moneys arising from the sale of rebel property and not from the taxes imposed on Union slaveholders."

COMPENSATION "TURNED DOWN."

When it came to a vote both Mr. Wheat's amendment and Mr. Willey's substitute were laid on the table, carrying with them the whole question of compensation.

AMENDMENT ACCEPTED.

Then the simple resolution reported by the committee to insert in the constitution the provision required by Congress in place of section 7 of Article XI, was adopted by
CONSTITUTION AMENDED.

unanimous vote, only two members being absent. Next morning the constitution as thus amended was readopted by a vote of 52 to none.

For an exact understanding of what was done let it be stated: The provision which Congress had required to be stricken out was this:

7. No slave shall be brought, or free person of color be permitted to come, into this State for permanent residence.

The provision required to be inserted was the following:

7. The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and all slaves within the said State who shall at the time aforesaid be under the age of ten years shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein.

RECORD OF DEBATES.

At this point Mr. Van Winkle made another effort to secure a record of the debates. He offered a resolution "authorizing" the Executive Committee to contract with the person who had preserved a report of the debates for their transcription, and for future publication if the committee saw fit. The Convention cut out the authority to publish but authorized the committee to contract for having the debates written out. But the authority was never exercised.
ORGANIZING THE NEW STATE.

The last day of the session an ordinance was passed "for the organization of the State of West Virginia." It provided that on Thursday next succeeding the thirty-fifth from the date of the President's proclamation under the act of admission, an election for State and county officers should be held throughout West Virginia. The Executive Committee were entrusted with the details of holding the election and of providing for the accommodation of the Legislature and executive officers at the city of Wheeling. It was provided that the Legislature on the sixty-first day after the date of the President's proclamation should meet at eleven o'clock in the forenoon and proceed to organize. All officers acting within the State by authority of the laws of Virginia were to continue the exercise of the powers and duties of their offices in the name of West Virginia until officers chosen under the new constitution were elected or appointed and qualified to succeed them.

The Convention adjourned February 20th, subject to recall by the Executive Committee; but if not previously convened it was to stand adjourned from the date the New State was organized and in operation, and Mr. Dille was appointed Vice President to act in the contingency of the death of the President.

AMENDMENT RATIFIED BY THE PEOPLE.

The amended constitution was submitted to vote March 26, 1863, and the amendment ratified by 18,862 to 514. This vote did not include the volunteers in the United States army, roundly stated at ten thousand.
Recurring to the informal vote on Mr. Battelle's emancipation provision when the constitution was first submitted, there were then reported 610 votes against it. Now in the whole State on a formal vote the number against was a hundred less. The informal vote of six thousand for in a few counties had grown under legal submission of the question to nearly nineteen thousand in favor of a stronger provision. Emancipation would have been just as heartily ratified in 1862 as in 1863. The politicians had been frightened at a bogey of their own raising. They were afraid somebody else might be afraid. Public opinion in West Virginia was not afraid of the question. The people of the State were ready to accept emancipation—eager to do so—as giving their new State its fitting status at home and before the world.—From first to last, the old-time politicians who had formerly controlled public opinion were fighting the advance of the free State and retreating before its irresistible march. Finally, they saw there was nothing for them but to fall in with the victorious column; and with their accustomed assurance they took their places at the front, assumed the leadership and appropriated the glory and emoluments of victory.

An address issued by the Committee on Revision and Engrossment after the adjournment of the Convention, like the one Mr. Willey brought out from Washington, was a work of supererogation. It sought to prove what there were few to deny. It set up men of straw and then skilfully knocked them down. It assumed that an objection pervaded the State to "Congressional dictation;" that
there was a deep-seated affection for slavery and unwillingness to see it removed even in the gradual way provided. The simple, obvious, common-sense fact was that—save a few politicians, and they only for captandum—nobody cared a fig about "Congressional dictation," and few about slavery. The great body of the people who were loyal to the United States were far ahead of them on that question and anxious to be rid of the negro institution as quickly as possible. These gentlemen sought to make it appear that what had come to pass was of their doing, when in truth it had come in spite of them, through force of a growing public opinion which they were never able to catch up with.

THE FREE-SOIL ANTISEPTIC.

The free-soil sentiment in Northwestern Virginia was the salt that saved the mess from putrescence. Let this be emphasized, for it is the immortal truth. It was the efforts of the free-soilers like Campbell and Peirpoint, Atkinson, Paxton, Woodward, the Nortons, the Hornbrooks, Battelle, Stevenson and others like them, which carried the State through the snares and besetments of chicane and treachery—over honest opposition and dishonest friendship—which won the way in Congress over doubts and misgivings about regularity and legality. It was sympathy with these anti-slavery men which enlisted Bingham, the "Old Man Eloquent" of the House. As Campbell once told the Convention in his paper, the anti-slavery men were the only friends the New State had in Congress; and a pretty figure we should have cut but for their favor.
NEW STATE PROCLAIMED.

THAT "COMPROMISE."

The address last referred to erred in stating that "a compromise clause was agreed on" regarding slavery in the Constitutional Convention. The adoption of the clause was not a compromise. There was an apparent cooperation between Pomeroy of Hancock and Benjamin H. Smith to shelve Battelle's proposition, and adopt the negro-exclusion clause only, as a sort of settlement. Pomeroy made the suggestion, and Smith, representing the pro-slavery element, seconded by Brown of Kanawha, accepted the trick and assumed it to be an overture for compromise; and then Dille took it upon himself to rise in the role of "bless you my children" and make everybody happy. No intelligent spectator on or off the floor was deceived by this play of pretence. Neither Mr. Pomeroy nor Mr. Dille had any authority except his own to offer any "compromise." Mr. Battelle, the only member who had anything to compromise, expressly disclaimed all part in it. He declared he "entered into no compromise on this question," and that there had been nothing to give the matter the dignity of a compromise. There had been simply an application of the gag, and Mr. Battelle so felt it and protested against it. Nor should it be forgotten that the clause adopted with so much gush was the one Congress required the Convention to take out, because in forbidding free negroes to come into the State it trenched on the rights of citizens of the United States.

THE PRESIDENT PROCLAIMS.

A copy of the amended constitution was certified by the President of the Convention (countersigned by the Executive Committee) to the President of the United States;
and on the 19th of April President Lincoln issued his proclamation declaring the admission of West Virginia completed, to take effect, according to the terms of the act of admission, sixty days thereafter.

SENATOR CARLILE PLAYS HIS LAST CARD.

Senator Carlile had meanwhile not been willing to confess defeat. On the 14th of February, 1863, he introduced in the Senate a bill “supplemental to the act for the admission of West Virginia, &c.” In this he provided that the proclamation of the President should not be issued until the counties of Boone, Logan, Wyoming, Mercer, McDowell, Pocahontas, Raleigh, Greenbrier, Monroe, Pendleton, Fayette, Nicholas and Clay, “now in possession of the so-called Confederate government and over which the restored government of the State of Virginia has not yet extended or expressed, have voted on and ratified the conditions contained in” the act of admission. The bill was referred to the Judiciary Committee, who reported adversely. February 28th, Mr. Carlile tried to have the bill taken up for consideration, but the Senate refused by a vote of 28 to 12. Thus the last card in the unfaithful Senator’s game was played in vain.

It must not be supposed that Mr. Carlile was alone in these efforts to defeat the New State. As having evident connection with his course in the Senate, it is a curious fact that there stands on the records of the Legislature of the restored government an act passed February 4, 1863, providing for elections on the 4th Thursday of May succeeding, on the question of annexing to West Virginia
the following districts outside the boundaries fixed in the constitution:

1. Tazewell, Bland, Giles, Craig.
3. Allegheny, Bath, Highland.
4. Frederick and Jefferson.

The act gave consent in advance that any or all these districts might be annexed to the New State; and provided that if the condition of the country did not permit an election at that time, the Governor should as soon as it would permit, order such election. It is apparent Mr. Carlile had coadjutors at the home end of the line. Such action indicates a plasticity on the part of the Legislature that does them no credit. If they desired to promote the admission of West Virginia, this was a singular way to do it. If they sought to protect the integrity of Virginia, this was a peculiar way to do that; for the success of this scheme would have left the old Dominion but a fragment of its once broad domain.

THE NEW STATE WRECKERS WHO FAILED.

Mr. Parker asserts positively that it was the deliberate plan of the pro-slavery leaders in West Virginia “to wreck the New State project upon a failure to harmonize” the constitution “with the views of Congress on slavery.” This appears to be the key to their attitude in the Constitutional Convention,—to send a constitution to Washing-
ton which they knew Congress would not accept. Evi-
dently Mr. Parker thinks Mr. Willey's careful avoidance
of all allusion to the informal expression of the people in
regard to emancipation, in his address when presenting
the memorial, was in consonance with this plan. Mr.
Parker was active in pushing the vote on the emancipation
question in the Southwest when the first vote was taken on
the constitution; and regarding the action of Brown of
Kanawha and Hall of Mason, he makes these statements:

If they really desired a New State, why did they contend
in the Convention for taking in the whole valley with 60,000
slaves, with which Congress could never have been reconciled?
Why refuse to submit the gradual emancipation clause to the
decision of the people? Why were James H. Brown and John
Laidly, while holding courts in Wayne and Cabell counties all
the time warning the people against having anything to do with
the subject; reiterating what every sane man knows to be false,
that such an expression was unnecessary to secure admission by
Congress. Why should John Hall, President of the Conven-
tion, visit Ceredo during that court and hold consultation with
Brown and Laidly? Why should James H. Brown advise
Colonel Lightburn to suppress all expression in his regiment on
the subject? Why did James H. Brown advise the people at
Barboursville that it would do much hurt, and that it was only
a scheme of ambitious demagogues? Why did John Laidly come
before the commissioners while holding the election at
Guyandotte, pale and shaking with rage, while the people were
voting for the clause, and declare the instruction to be un-
authorized and improper, and use all the means in his power to
suppress their expression on the subject? All these things I
stand ready to prove by unimpeachable witnesses.

WAYS AND MEANS.

February 3, 1863, the Legislature of restored Vir-
ginia passed an act transferring to the New State when
it came into being, all the interest of Virginia in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, within the territory embraced in West Virginia; and the following day made an appropriation of $150,000 and of whatever balances might on the 20th of June remain in the treasury shown on the Auditor's books as belonging to the counties included in the New State.

WEST VIRGINIA INAUGURATED.

June 20, 1863, witnessed the installation of the new Commonwealth. The Linsley Institute building, at the corner of Fifth and Center streets, in the city of Wheeling, had been prepared as a temporary capitol for the use of the Legislature and Executive. In front of the building a platform had been erected, draped in the National colors; and upon this the Governor and other State officers chosen at the elections held by the commissioners of the Convention, under auspicious skies of a bright June morning, in the presence of a great and joyous assemblage collected on the adjacent streets and grounds, assumed the obligations of their several stations; following which the two houses of the Legislature withdrew to their respective chambers and organized for the laborious task of framing new statutes to make effective the new charter of their freedom and independence.

The dream of generations had "come true." Some whose hopes and labors had been crowned were not here to enjoy the fruition. At last we had come to the end of the toilsome road; the close of the fierce, the bitter, the enduring struggle; had triumphed over perils by land and

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sea, by flood and field—the assaults of open, the snares of secret, foes—the timidity of the faint-hearted, the rashness of the bold. At last we were out of the wilderness; not only in sight but in possession of the promised land. The past, with its anxieties and bitterness, was to be forgotten save for its lessons of wisdom and patience; and now all faces turned to the future, rosy in the dawn of enfranchisement and progress!