

ance of that authority—they frame a constitution—a large majority of its members, after months of deliberation and discussion, adopt it—they are to submit the work of their hands to their constituents—they require, however, that all who offer to vote upon it shall swear that they have never given aid, countenance or support to the rebellion which is seeking to overthrow the government of which they are part—they claim to do this not merely as the representatives of the people intrusted by them in such cases with powers adequate to such a proceeding, but they rely upon the grant of express authority to that effect by the legislature which provided for their meeting, and upon the authority of similar proceedings by other conventions.

You and I may look at these transactions from different points of view, but I think it must be admitted I have correctly recited the leading facts in the two cases, and, assuming this to be so, can it be contended that there is any similitude between them, and that because in the one I promised that the power of the State should be exerted to defend the judges in the execution of its unquestioned laws, I should now interfere, not as then, to protect them for obeying these laws, but to become the exponent of what these laws are in a case where the people of the State differ widely in opinion, whether the law of the next election is to be found in the old constitution or the new?

You, I know, consider the action of the convention a usurpation. I have briefly stated some of the reasons why, to my mind, that is not so palpable. Not because in the plenitude of the powers with which such conventions are supposed to be invested, and to which I have occasionally referred, they can do no wrong—for we can imagine that such a body, as well as an individual, might assume an authority that would be a flagrant usurpation.

If the people, for instance, at the election at which the members of this convention were chosen had voted that we should have no convention, and these members had still insisted on assembling; or if some small number of those elected, confessedly less than a quorum had undertaken to form a new constitution—these would have been such unquestionable usurpations, revolutionary almost in their character, that no officer in the State would be bound to regard them; but to my mind the difference between such cases and the one we are discussing is very obvious.

I referred in my previous letter, in illustration of the powers claimed for a convention of this character, to the present constitution of the State, inaugurated as it was in a manner forbidden by the constitution which it superseded. You object to that precedent as not applicable to the present case, because the part of the old constitution disregarded, related only to the *manner* of amending it, and

did not affect the rights of the people under it.

Let me cite another authority, the applicability of which I think you will not deny, and which supports the course of the late convention in the proceeding in question as far as precedent possibly can.

In 1829 a constitutional convention assembled in Virginia. A recurrence to a list of its members will show a roll of illustrious names, surpassed in character and talent by none that ever formed a similar assembly.

They adopted a new constitution, which, like ours, was only to become operative when ratified by the people. The concluding lines of its preamble declared that "We, therefore, the delegates and representatives of the good people of Virginia, elected and in convention assembled, &c., *do submit and propose to the people* the following constitution."

Now, who were the people to whom they thus submitted it? The qualification required of a Virginia voter, like our own, was precisely defined by their constitution. None but freeholders were qualified to vote. They alone had enjoyed the right of suffrage for fifty years, and they alone had elected that convention.

The constitution which secured to them this exclusive privilege was still in force, and must so continue until they adopted another, and, as you say in reference to ours, the new constitution proposed to them, until so adopted, was a mere proposition without vitality or energy. To apply to it your comments in this case, until then it was "but a skeleton," "a feather floating upon the breeze of popular opinion," and "required the people to breathe into it life and power." Using your argument in the present case, the rights and property of the people of the State were held under the old constitution, the qualifications by it prescribed for the voter must continue as the only qualification until another ratified by these qualified voters took its place. Hence your conclusion that to allow a new qualification to be required before that time was an infraction of constitutional rights, and to provide for the taking the vote of soldiers out of the State, when that was not permitted by the existing constitution, was a flagrant usurpation of authority. This, undoubtedly, is your argument, briefly stated. Now, under the constitution of Virginia, all who were not freeholders were as effectually excluded from the elective franchise as their negro population, and yet the convention, in submitting the new constitution to the people, allowed large classes to vote, such as owners of leasehold, householders who paid a tax, and many others who had never before exercised the right of suffrage.

The convention allowed them to vote. They did vote, and undoubtedly by their vote the constitution was carried. The only possible difference between the authority o