

that the powers of the convention were not limited by the terms of the act calling it into existence, the court said: "The claim as to the superior power of this convention over that of the legislature is a mere flourish of words, and will not stand the test of analysis. The legislature, within its own province, as defined by law, is supreme. To no greater extent is a convention, which, like the legislature, must derive its power from the law. That the convention derived its power from the people is true, but the power thus conferred was limited by the people themselves to the terms of the legislative enactment under which the members of the convention were elected. If this limitation, or some other which defined the purpose of the act, had not been embodied therein, no reason would have been presented for requiring the people to vote upon the selection of delegates to the convention. In the absence, therefore, of this or some other prescribed purpose, the act would not only have been futile, but absurd."

Under a Constitution which provided for the calling by the people of a constitutional convention upon a vote of two-thirds of both branches of the legislature,<sup>10</sup> the power of the legislature to limit the powers of the convention in the act calling it into existence was sustained in *State ex rel. M'Cready v. Hunt* (S.C.), *supra*. A constitutional convention was called by an act of the South Carolina legislature which confined its purpose to considering, and devising the means of redress from, certain acts of Congress laying duties and imposts on foreign imports, for the protection of domestic manufactures, or for the purpose of enforcing them. After

<sup>10</sup> See *State ex rel. M'Cready v. Hunt*, 20 S.C.L. (2 Hill) 1, 272 (1834).

the delegates had been elected by the people under that act, the convention, in addition to dealing with the subjects specified in the act, passed an ordinance defining the allegiance of the citizens of South Carolina as due to this state and authorizing the legislature to provide for the administration of suitable oaths binding the citizens and officers of the state to the observance of such, and abjuring all other, allegiance. This act of the constitutional convention was held to be in excess of its powers, as defined by the act calling the convention into existence. On that proposition all three judges agreed. O'Neill, J., said (pp 222, 223): "A convention assembling under the Constitution is only the people for the purposes for which it assembles; and if they exceed those purposes, their act is void, unless it is submitted to the people and affirmed by them. It is true, the legislature can not limit the convention; but if the people elect them for the purpose of doing a specific act or duty pointed out by the act of the legislature, the act would define their powers. For the people elect in reference to that and nothing else. . . . It is clear that the convention had no right to pass the ordinance defining allegiance, and to authorize the legislature to pass laws to carry it into effect." Rejecting the idea that the convention possessed all the powers of the people and might rightfully exercise them in relation to all subjects, and in any manner they might think fit, Johnson, J., said (p 242): "In the appointment of delegates to that convention, the people acted upon the faith that they were to be charged with those duties and no others, and the assumption of any other powers than those necessary to the attainment of the objects in view would have been a violation of the trust reposed in them, and an usurpation of the