

rights of the people." And as against an argument drawn from the supposed absurdity of the legislature, an inferior authority, putting limits to the power of its superior and creator, Harper, J., had this to say (pp 270, 271): "The question is of the authority of the convention. An ordinance is produced to us passed by a certain number of individuals assembled at Columbia. This gives it no authority as an act of the people. But we are told they were elected by the people. This, however, is not enough. For what purpose were they elected by the people? To represent their sovereignty. But was it to represent their sovereignty to every purpose, or was it for some specific purpose? To this no other answer can be given than the act of the legislature under which the convention was assembled. Certainly, the people may, if they will, elect delegates for a particular purpose, without conferring on them all their authority. To deny this, would be to detract from the power of the people and to impose on them a most inconvenient and dangerous disability. If before the adoption of the present constitution, the people electing delegates in their primary capacity, had, by a majority of their ballots, specified a particular measure to be considered and decided in convention, will it be pretended that the convention would have possessed authority for any other purpose? But the legislature in passing the act for calling together the convention were not acting in their legislative capacity. The act has no relation to the general powers of legislation. They were the agents of the people for this particular purpose, and entrusted by the Constitution to speak their voice. But suppose there had been no such provision in the Constitution, and the legislature had passed an act recommending to the people to meet in convention for

a specific purpose, and in pursuance of the recommendation the people had elected delegates accordingly, what right or reason would I have to conclude that the people intended to entrust this convention with their authority for any other than the purpose specified? This would be plain usurpation on the power of the people."

Although the provision in the Constitution of Virginia concerning the calling by the legislature of a constitutional convention¹¹ did not by its terms authorize any restrictions on the powers of the constitutional convention to be called under that provision, but provided that upon a majority vote of the members of each house of the general assembly the question "shall there be a convention to revise the Constitution and amend the same?" should be submitted to the electors, and although in another section¹² the Constitution made provisions for the adoption of constitutional "amendments" by submission to the people, it was held in *Staples v. Gilmer*, 183 Va. 613, 33 S.E. (2d) 49 (1945) (the Chief Justice dissenting), that it was within the power of the legislature to enact a statute which, in submitting to the electors the question above quoted, expressly purported to limit the powers of revision and amendment of the constitutional convention to specified subjects, in this case to subjects dealing with the payment of poll taxes by members of the armed forces. As against the objection that it was beyond the power of the legislature to limit the scope of the constitutional convention called by the people, it was pointed out

¹¹ Section 197 of the Constitution, as quoted in the majority opinion in *Staples v. Gilmer*, 183 Va. 613, 33 S.E. 2d 49 (1945).

¹² Section 196 of the Constitution as quoted in the majority opinion in *Staples v. Gilmer*, 183 Va. 613, 33 S.E. 2d 49 (1945).