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THE NEW YORK CONSTITUTIONAL CONVENTION.

The sixth Constitutional Convention of the State of New York concluded its labors on the 14th of September last. It was in session at the State capital for something more than four months. It formulated thirty-three distinct amendments, and presented the result of its labors to the electors in the form of a revised constitution. Having been ratified at the polls at the November election the new constitution on the 1st of January last became (with the exception of the judiciary article, which becomes operative a year later) the fundamental law of the Commonwealth. By its considerable changes in our organic law have been made, and as they affect the welfare and good government of six millions of people they cannot fail to interest the student of jurisprudence.

The meeting of so unusual an assemblage was deemed a matter of great importance to the people of the State at large, and particularly to the members of the legal fraternity. Without the State it attracted no great attention, save so far as the efforts of the woman-suffragists to secure their alleged rights, gave the convention a passing notoriety. But now that its proposed amendments have passed into existing law it has been thought that a brief review of its proceedings and a summary of its work would be acceptable to those interested in the evolution of constitutional law.

Before adverting to matters accomplished by the convention something as to its inception, organization and general characteristics may be desirable. The authority for its existence was embodied in the former constitutional provision that in the year 1866 and in each twentieth year thereafter, the question

should be submitted to the electors of the State to decide: "Shall there be a convention to revise the constitution and amend the same?" If the answer should be in the affirmative the Legislature was required to provide for the election of delegates. Pursuant to this mandate the question was submitted to the electors in 1886 and they decided with practical unanimity in favor of a convention. Partisan considerations, however, controlled subsequent legislative action in the matter and no provision was made for the meeting of a convention until 1892, when an act providing for the election of delegates, to meet on the second Tuesday of May, 1893, became a law. Political considerations again intervened and in 1893 the act of the preceding year was substantially amended out of existence, and a new statute took its place. The act of 1892 had very closely followed the provisions of the law which had summoned into existence the convention of 1867; each of them provided for thirty-two delegates, to be elected from the State at large, with a proviso that no elector should vote for more than sixteen of the delegates, thus establishing minority representation. The result of this method of election was highly satisfactory. It brought into the convention of 1867 men of commanding ability, belonging to each of the two great political parties. For political reasons, which ultimately recoiled upon the party responsible for the change, this provision was annulled. The act of 1893, under which the convention came into being, provided for one hundred and seventy-five delegates, of which fifteen were elected from the State at large and five from each of the thirty-two senatorial districts. Accordingly, at the fall election party machinery was put in motion, nominations were made in the usual way, and delegates elected to the convention, which met at Albany on the second Tuesday of May following. Politically the republicans were in the majority. Of the one hundred and seventy-five members elected, ninety-eight were at least nominally republicans and seventy-seven democrats; very few, however, were professional politicians. Political affiliations, indeed, played no great part in determining the action of the convention; in only a few instances were amendments carried or defeated by a strict party vote.

Professionally three-fourths of the delegates were lawyers. A large number of them were liberally educated. Not a few had gained a wide reputation at the bar. As a whole they were men of ability and high standing in the communities where they resided, and they had a high sense of the responsibilities and duties of their position. In the selection of a presiding officer

the convention was supremely fortunate. In the person of Joseph H. Choate was found one whose attainments and abilities reflected honor upon the convention and dignified its proceedings. His delightful tact disarmed criticism, whatever his rulings; and that unfaltering courage in maintaining his convictions, which especially characterized him, gained for him, even more than the charm of his eloquence, the admiration of the convention. At the head of the judiciary committee was Elihu Root, whose infinite capacity for labor, added to his great abilities and acquirements as a lawyer, enabled him to impress himself upon the work of the convention to an extent unapproached by any other member of that body.

Early in its session the convention was called upon to assert and maintain its prerogatives. A writ of prohibition was issued out of the Supreme Court upon the petition of one Herman F. Trapper, a sitting member, whose seat was contested on the ground of gross frauds committed at one or more of the election districts within the City of Buffalo, from which he was returned. The writ assumed to restrain the convention from taking any action which should interfere with or abridge in any way his rights and privileges as a member, and required it to desist from proceedings in the matter of deciding upon his qualifications and election. The writ having been personally served upon each of the delegates, two questions were fairly presented: First, as to the right of the convention to pass upon the election and qualification of its own members; second, whether the convention was inferior to the Supreme Court.

Considering it to be of the first importance that a body chosen to revise the organic law should be free from interference, whether by the executive, legislative or judicial branch of the government, the convention repudiated the action of the court and asserted its rights as an independent legislative assembly, with plenary powers within its sphere of action, which it derived directly from the people. As a corollary to this proposition, it maintained that the right to judge of the election and qualification of its members was essential to its efficiency, and that interference from without, in this regard, would be destructive to its independence and authority—that the power claimed was necessary to its existence and the proper performance of its recognized functions. In accordance with this declaration of its powers the convention caused a copy of the report adopted by it to be transmitted to the Supreme Court, together with a respectful remonstrance against its entertaining jurisdiction in the

matter. As nothing further was heard of the proceeding it is to be presumed that the court, on consideration, adopted the views of the convention.

Having maintained its prerogatives the convention proceeded to perform the work for which it had been summoned. The constitution of 1846 had for nearly half a century served as the great charter of the State. At the time of its promulgation forebodings of the ills likely to accrue to the body politic from its adoption were everywhere heard. It was bitterly assailed as extreme in its democratic tendencies and as practically revolutionizing the policy of the State with its decentralization of political power and its elective judiciary. But the event has not fulfilled the dire predictions. It did, indeed, in the words of the address which accompanied it, "Place the happiness and prosperity of the people of the State under God in their own hands;" but the people have seen to it that no great detriment occurred to the State thereby. We have under its sanction advanced with unprecedented rapidity in population, wealth and power; and on the whole the high character of our judiciary has been well maintained.

The convention of 1894 was not inclined to radical measures. It appreciated the excellence of the existing constitution, very many of whose provisions had received judicial construction. In the main it was known to be acceptable to the people of the State, and it was deemed to be the part of prudence to modify the old constitution only so far as changed conditions had rendered it desirable. But this conservative action was not accepted without resistance by the reformers both within and without the convention. At a time when the air was thick with socialistic schemes for regenerating political life, it was not to be supposed that the convention would escape the enthusiastic doctrinaire and the professional reformer. They were present in force and brought their amendments with them. Scarcely a provision of the old constitution seemed satisfactory to every one; even the preamble and bill of rights, which were supposed to be fairly acceptable, were asserted to be radically defective. Something over 450 proposed amendments of the most diversified character were submitted to the convention for its consideration. Fortunately the delegates, as a whole, were a conservative body of men. They fully appreciated the fact that in the attempt to reform abuses, the abuses of reformation were to be avoided. Out of this mass of material only thirty-three amendments were presented to the electors for adoption.

The real occasion for a constitutional convention, and the one justifying its assembling, was the unfortunate condition of the judicial system of the State. It had broken down under the stress of business it had been called upon to do. Our court of last resort had proved entirely inadequate to cope with its cases, and temporary relief had been supplied; at one time by a commission of appeals and at another by a second division, made up of Supreme Court justices selected by the Governor. But this duplicate system had proved unsatisfactory. So, too, the calendars of the trial courts in the cities had become congested and some relief was demanded, as justice by being long delayed was practically denied. In addition to this the multiplicity of courts in the larger cities had been found confusing and undesirable. In order to remedy these and other existing evils the whole judiciary article was revised and materially changed. Briefly stated, the plan adopted to relieve the Court of Appeals was to strengthen the intermediate court by establishing an appellate division of the Supreme Court, to consist of five judges, and generally speaking to limit appeals to judgments and orders of the appellate division finally determining the action or proceeding, and to orders granting new trials on exceptions where the appellant stipulates that upon affirmance judgment absolute may be rendered against him. To relieve the trial courts and to supply judges for the appellate division, twelve new judges were provided. The Superior Courts of the cities were consolidated with the Supreme Court. In addition to these changes the existing limitation of five hundred dollars on appeals to the Court of Appeals was abrogated, and the system of pensions for retiring judges was abandoned. It is, perhaps, worthy of mention that the return to an appointive judiciary found little support in the convention; while on the other hand an attempt to shorten the term of the judges from fourteen years to eight years was defeated by a large majority.

That the new judiciary article has simplified and in the main greatly improved our judicial system is beyond question, but the general opinion of the bar of the State is that the provisions for the relief of the Court of Appeals will prove entirely inadequate. By withdrawing all money limitation, an invitation is extended to appeal minor cases, which will, it is said, more than make good the appeals from orders that have been prohibited. So, too, it is asserted that the assumption that strengthening the intermediate appellate court will have a tendency to lessen appeals to the court of last resort, takes too little account of the staying qualities of the average litigant.

Next in importance to an improved administration of justice was the subject of municipal reform. The convention was fully alive to the debased condition of municipal government, and to the fact that if universal suffrage had not absolutely failed at this point it had, at least, come alarmingly near to it. Universal complaint of extravagance, inefficiency and corruption came from every quarter. The disease was conceded to be serious, but no remedy sufficiently commended itself to the majority of the delegates to warrant its adoption. The cities committee labored long and arduously, and with a patience that was most commendable, to devise some treatment that would, at least, alleviate the existing disorder. They presented as possible palliatives various limitations upon the Legislature, cumulative voting, minority representation, prohibition of special legislation, and various other constitutional remedies of a more or less drastic character, but the prevailing opinion was opposed to embodying in the organic law provisions of an experimental kind which, in the present chaotic state of affairs, might prove not only ineffectual for good, but might prove altogether vicious. The result was doubtless disappointing to the friends of civic reform, but it was, no doubt, the part of wisdom to avoid extreme measures. The wide diversity of opinion existing among men of large experience and long study of the municipal problem was deemed to justify conservative action. It must not be supposed, however, that after so great labor nothing was produced. On the contrary, amendments of no small importance relating to improved municipal government were incorporated in the constitution. Cities were divided into three classes—the first class have a population of not less than 250,000, the second less than that number, but more than 50,000, the third class includes all other cities. Laws relating to cities are denominated either general or special city laws, as they relate to all cities of a class or otherwise. Special city laws do not become effective until the Mayor of the city affected shall have had fifteen days to certify to the Legislature whether or not the city approves of the proposed law. In the cities of the first class the Mayor alone may act for the city; in other cases the Mayor and legislative body of the city are to act conjointly, and provision is made for public notice. When approved the bill is still subject to the action of the Governor. If not approved or not returned within fifteen days, it may again be passed by both branches of the Legislature, and upon approval by the Governor becomes a law. These provisions, supplemented by the separation of municipal from State and national elections,

by providing that the former shall be held on odd years and the latter on even years, summarizes the amendments tending to the improvement of city government.

In the interest of purer elections personal registration is required in the cities and villages having more than five thousand inhabitants. Bi-partisan election boards are constitutionalized and a period of ninety days is prescribed for citizenship as a prerequisite to the exercise of the franchise—the last amendment being directed against the fraudulent naturalization of vast numbers of foreigners on the eve of important elections, when investigation as to their qualification becomes a ridiculous farce. The fact that in a single day 500 individuals were judicially declared by a single judge to be worthy of citizenship is a sufficient commentary on the old requirement. The merit system of appointment based upon competitive examinations was embodied in the new constitution in substantially the same form as it before existed in the general statutes of the State, thus insuring permanence to our new and improved civil service.

Other amendments relate to better methods of legislative action. To prevent a mass of undigested and vicious enactments being rushed through the respective houses during the last hours of the session, it is provided that all bills shall be printed and upon the desks of the members in their final form at least three days prior to their final passage. A further provision prohibits riders on appropriation bills, and is directed against a well-known and very objectionable method of legislative procedure to forward doubtful measures.

In reference to public institutions, the new constitution declares for the maintenance and support of a system of public schools wherein all the children of the State may be educated. Sectarian appropriations by the State, or any of its civil divisions, are prohibited; although the phraseology of the amendment did not unqualifiedly commend itself to a number of the delegates whose sentiments were tinctured with religious bigotry. At the beginning of the convention numerous petitions were presented setting forth alleged abuses that had arisen in the large cities of the State because of extravagant gifts to Roman Catholic institutions, bestowed directly or indirectly from municipal funds. On examination it was found that these charges were greatly exaggerated, and that whatever minor abuses existed they were rather the fault of a system which, though in itself excellent, had been so carelessly administered as to require a more effective public supervision. The policy of the State for many years had

been to encourage private charities by contributing indirectly to their support through payments to them for the care and maintenance of dependent children and others. The amount was usually a *per capita* sum, much less than the actual cost to the institution. Under this wise policy a multitude of asylums and orphanages came into existence, established entirely by private munificence. The movement was begun by the Protestants and was soon joined in by the Catholics and Hebrews. Owing to the larger per cent. of dependent poor in the cities belonging to the Catholic faith, it occurred that the aggregate sum paid to this denomination for the support of the unfortunate largely exceeded that paid to the Protestant institutions for the like service. Upon a thorough examination by a most efficient committee, with an eminent Hebrew as its chairman, a report was presented to the convention exonerating the Catholic institutions from any serious derelictions, and the sectarian issue was disposed of by requiring the State Board of Charities to assume the supervision of these *quasi* public institutions.

The only measure which appealed directly to the political prejudices of the delegates was the apportionment adopted by the convention in its readjustment of the Senate and Assembly districts of the State. The new constitution increases both the number of Senators and Assemblymen, the former from thirty-two to fifty, the latter from one hundred and twenty-eight to one hundred and fifty. It also lays down certain principles which are to govern future apportionments. Both the apportionment and rules adopted were most violently attacked by the party in the minority on the submission of the constitution to the electors. The article was bitterly assailed as bad in principle and partisan in its execution. But now that the smoke of battle is cleared away and the apportionment and its accompanying regulations have become a part of our organic law, I think it may be truthfully said, that while any division of the State into districts observing county lines will always result in inequalities, the existing apportionment is not, on the whole, unfairly made. It must be borne in mind that the principle enunciated was that numerical considerations alone ought not to control in senatorial representation, and that a real danger would menace the State if a single city should dominate by having a majority of the members in each House. To avoid this preponderance it was provided that no one county should have more than one-third of the Senators, and no two counties more than one-half; thus preventing New York and Brooklyn from having together a majority in the Senate.

The rule thus adopted is not a novel one. Substantially the same limitation has heretofore appeared in the constitutions of other States containing large cities. This principle not only commended itself to the convention, but it was further provided that no county having more than three Senators should have an additional one, unless it should have a full ratio, although smaller counties are entitled to additional representation in the Senate on gaining a major fraction of a ratio. This provision was intended to favor the country at the expense of the cities, and it is based on the fact that the effective power exercised in a legislative assembly by a cohesive body of representatives voting usually as a unit is out of proportion to their numerical strength. This consideration, added to the narrow territorial area represented by the urban Senators, led the people of the State thus to limit their senatorial representation.

Other amendments of importance can only be briefly referred to: The so-called Ives pool bill, an infamous statute passed to legalize gambling on the race tracks of the State, is abrogated. A prohibition against public officials accepting passes from the railroads, telegraph and telephone companies is adopted, thus putting an end to a vicious system of blackmail and corruption which had a tendency to debase every department of public service. The Coroner, as a constitutional office, ceases to exist, and the limitation of damages to \$5,000 in case of death arising from negligence is removed. The forests of the Adirondack region are protected from further spoliation. The contract system of prison labor was prohibited and a more liberal policy towards the canals of the State was adopted.

Of the amendments rejected by the convention the various propositions which, in one form or another, provided for the extension of suffrage to women, attracted wide attention. The persistent and vigorous campaign made by the friends of the movement brought down upon the convention numberless petitions. It cannot be denied that the measure was supported with great ability and still greater enthusiasm; but its immediate results must have been disappointing to its advocates. Notwithstanding the time devoted to the subject it had very little real strength in the convention. Even the adverse vote of ninety-eight to fifty-eight by no means fairly represents the real sentiments of the delegates upon the merits of the question. A number voted for the submission of the matter to the electors, in order to shift the responsibility. A few politicians regarded it as an easy method of bringing the revised constitution into disrepute

and thus securing its defeat, while a considerable contingent, as a matter of gallantry, consented to give the movement their votes. So far as the feelings of the delegates were a criterion it was quite apparent that the movement had made no great progress since 1867, when the matter was before the former constitutional convention.

From this brief summary of the work of the convention it will appear that no radical methods were adopted. The liberal constitution of 1846 had proved acceptable to the people. Under its ægis the State had developed into a rich and powerful commonwealth. The people regarded it with veneration and the delegates reflected the sentiment of their constituents. They undertook their labors in no iconoclastic spirit. They struck out the obsolete provisions. They revised and amended only so far as was essential to adapt the old charter to the new conditions of political life which time and extraordinary growth had evolved. That they deserve well of the State for that which they have accomplished is probable; that they merit commendation for what they did not do is certain. Assembling at a time when the fierce and clamorous spirit of political unrest was everywhere rife, the convention sturdily refused to depart from the old and well-tried principles of government. Political vagaries found but scant support, though respectful hearing. It was a conservative body, fully appreciating the importance of the task committed to it, and thoroughly alive to the public sentiment to which it was accountable. It submitted its work with confidence to the people, and its ratification by an emphatic majority followed. It is, or soon will be, the fundamental law of our State. Whether its provisions will accomplish all that is expected is a matter which time alone can determine; but that the administration of justice will thereby be improved and good government advanced is firmly believed by the friends of the new constitution.

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