

Chronology of Action on the Part of The State of Virginia to Complete Retrocession of Alexandria County (Arlington County) to Virginia¹

By: Harrison Mann

In his annual message on Monday, December 7, 1846, to the General Assembly the Governor, William Smith, said: "The last legislature, by act passed Feb. 3rd, 1846, having agreed to accept the recession of the town and county of Alexandria, so soon as the Congress of the United States shall by law give their assent thereto, - and it appearing that the Congress of the United States has given such assent, and that every preliminary condition and formality has been strictly observed, nothing now remains to effectuate the retrocession of the said county but for you to provide by law for the extension of our jurisdiction over it. I herewith communicate the official papers connected with this important acquisition, consisting of the letter of the Commissioners to me, under date of the 3rd September, 1846, communicating certain documents in relation thereto; also upon the same subject, a letter from the President of the United States, under date of the 7th Sept., 1846, with a list of accompanying papers, numbered 1 to 8 inclusive.

"Nothing now remains *** but for you to provide *** for the extension of our jurisdiction over it."

It sounded quite simple. The way it turned out, it wasn't as simple as it sounded. Subsequent events to the Governor's message served as a precursor of things to come a hundred years later. After the vote for retrocession, which was carried by 763 to 222, the opposition refused to lie down and die. On Dec. 8, 1846, the day after the Governor's message, the Speaker of the House of Delegates laid before the House a communication from the Governor, transmitting a memorial of certain citizens of Alexandria County, protesting against retrocession. This petition along with the other papers, was referred to the Courts of Justice Committee.

This committee of citizens, calling themselves the Committee of Nine, protested bitterly that the act of retrocession by the Congress was unconstitutional "and beyond the possibility of honest doubt, null and void." The General Assembly was therefore asked to disregard the Commissioners "pretending *** to speak for *** the citizens of the County of Alexandria, and more especially the country part of the same" until the question

¹This is the second part of the chronology, the first relating to action of the United States appearing in Vol. I, No. 1 of the Arlington Historical Magazine.

of constitutionality was brought before the Supreme Court of the United States. This, the Committee said they were going to do on the basis that the Congress was without power to act and even if the Congress did have the power, the federal 10 miles square is indivisible, and the Congress could only cede the whole and not a part.

Furthermore, the Committee said, the act of retrocession dealt a blow to one of the chief principles of liberty in that when the vote was taken, the will of the majority of the whole District of Columbia was not taken, but only a small minority of the citizens of the District were allowed to vote.² Since this was a decision of paramount importance to the whole, they said, it established a novel and dangerous precedent "whereby a minority is empowered to rule the majority."

It was evident, however, that neither the Constitutional question nor the question of principle were the greatest objections. The thing that rankled the most was that the "rural portion of the county (that portion which is now largely Arlington) was not consulted or advised of the intention to seek a change of our allegiance, the whole proceeding having been concocted and determined upon in secret meeting of the Corporation of Alexandria, an irresponsible body, having no manner of right to act upon the subject." The complaint had all the overtones of a fight between the "country boys" and the "city boys."

There is no doubt that the Committee of Nine spoke for a majority of the "country part of the county" which had voted heavily against retrocession in the referendum.

The petition, dated Dec. 2, 1846, was signed by Anthony R. Fraser, Wesley Carlin, Henry Hardy, Richard Sothoron, Nicholas Febrey, Walter S. Alexander, Samuel Birch, Horatio Ball, and Wash. T. Harper "acting by order and in behalf of the citizens of the country part of Alexandria County."³

Thereafter the parliamentary maneuvering began. On Monday, Dec. 14, 1846, Mr. Bocock, Chairman of the Committee on Courts of Justice, moved that his committee be discharged from consideration of the protesting petition and that it be referred to the select committee upon subjects relating to the city and county of Alexandria, to which the whole subject had been referred. On Dec. 16th the House agreed to a motion by Mr. Dorman that George W. P. Custis, Francis L. Smith and Robert Brockett, the commissioners elected by the people of the town

² That is, the Citizens of Alexandria County.

³ Doc. No. 5.

and county of Alexandria, to represent their interest before the legislature, be permitted to take seats within the bar of the House of Delegates during the session. Thus, the proponents of retrocession won the first round by getting their representatives on the floor.

At this point a new and unseen difficulty arose. On Dec. 22, Mr. Love of Fairfax presented a petition of certain citizens of Fairfax County asking that a corner of that county be annexed to the County of Alexandria and accompanying the petition two remonstrances of other citizens of Fairfax against its division. There was also a petition by certain Justices of the Peace of Fairfax and citizens of both Fairfax and Alexandria Counties in favor of annexing part of the County of Fairfax and requesting that the Justice of Peace residing in that part of Fairfax proposed to be annexed be retained and thus seniority maintained according to the date of their commissions. This brought an immediate reaction and on Jan. 14, Mr. Leake presented a memorial of sundry citizens of the town of Alexandria against giving magistrates in that portion of Fairfax, which was proposed to be annexed to Alexandria County, priority over citizens of Alexandria in commissions to be granted them.

On Jan. 7, 1847, Mr. Tyler (Prince William) of the select committee to consider the subject introduced House Bill No. 79, "a bill to extend the jurisdiction of the Commonwealth of Virginia over the County of Alexandria." Composed of 32 sections, most of which related to the status of pending suits, judgments, criminal proceedings and other judicial proceedings, the bill was a paragon of draftsmanship. We seldom see a measure in modern times so carefully or clearly drawn. Nevertheless, the final measure differed materially from the bill as introduced, almost every section having been rewritten.

Many provisions of this bill are of interest. First, Alexandria County was declared to be an integral portion of the Commonwealth and its citizens entitled to the benefits of its bill of rights and constitution. The county was to retain the name of the County of Alexandria.⁴

Alexandria County and the County of Fairfax were to send jointly one delegate to the House of Delegates, until such time as a new reapportionment should take place. As we shall see later, the question of representation was to cause a great deal of difficulty. Further, the county was to belong to the same Congressional district and Senatorial district as Fairfax "and

⁴The name of Alexandria County was changed to Arlington County in 1920.

Bill to extend the Jurisdiction of the Commonwealth of Virginia over the
County of Alexandria 79

Be it enacted by the General
Assembly of the Commonwealth of Virginia: That
the Territory comprising the County of Alexandria, in
the District of Columbia, heretofore ceded by this Com-
monwealth, to the United States, and by an act of Congress
approved on the ninth day of July 1846, retroceded to this
Commonwealth, and by it accepted, is hereby declared to
be an integral portion of this Commonwealth, and the
citizens thereof are hereby declared to be subject to all
the provisions and entitled to all the benefits, rights and
privileges of the Bill of Rights, and Constitution of this
Commonwealth.

Sec 2. That from and after the day of
1847, the public and general laws of this Commonwealth
shall inforce, and the Common Law as it is recognized in
this Commonwealth, shall be the Law of said Territory,
subject to the exceptions and provisions hereinafter contained

Sec: 3- That the Territory so retroceded and accepted, com-
prising the County of Alexandria, shall retain the name
of the County of Alexandria; and the said County and
the County of Fairfax shall together send one delegate to the
House of Delegates of this Commonwealth, until a re-appoi-
ntment of Representatives shall take place or until otherwise
declared by the General Assembly of this Commonwealth.

Sec 4. The said County of Alexandria shall belong to the
same Congressional District, the same Senatorial District, and to
the same Electoral District (for the purpose of choosing a
President and Vice President of the United States) as the
County of Fairfax. And elections for a delegate & senator to the
General Assembly of this Commonwealth - for a member of the
House of Representatives of the United States, and for Electors to
choose a President and Vice President of the United States,
shall be held at the Court House of the County of Alexandria.

First page of the Original Bill No. 79 to extend the Jurisdiction
of the Commonwealth of Virginia over the County of Alexandria,

Introduced January 7, 1847

(Reduced from Original size)

elections for a delegate and Senator to the General Assembly of the Commonwealth, for a member of the House of Representatives of the United States, and for electors to choose a president and vice-president of the United States shall be held at the court house of the County of Alexandria." Furthermore, in all such elections "a separate poll shall be held at the tavern house of Thompson, at Ball's Crossroads..."⁵ This provision was added to the original bill to satisfy some of the objections of the country area.

Courts were established and the 13 Justices of the Peace appointed by the governor were empowered to appoint an attorney for the Commonwealth, a commissioner of the revenue, and nominate a suitable person to the governor for sheriff and coroner. The only salary set out for these officials was that of the commissioner of revenue who would receive compensation "a sum not exceeding one hundred and fifty dollars" which, in the final bill, was changed to \$200.

The powers of the common council of the town of Alexandria as well as its charter were confirmed. However, "so much of the act of Congress passed on the thirteenth day of May, 1826, or of any other act as authorizes the common council of Alexandria to levy any tax on the property or persons within the said town, or to borrow money to promote any improvements for the benefit of said town beyond the limits of said corporation, be and the same is hereby repealed..."

The final bill provided for the appointment of three assessors and prescribed in detail how the assessment should be made. Also added was a section setting forth that the militia of the county should consist of one regiment, to be denominated the one hundred and seventy-fifth regiment of Virginia militia and it should be a part of the sixth brigade and second division. It was also provided that a public warehouse for the inspection of tobacco should be established in Alexandria, and that the County Court should appoint inspectors of tobacco, flour and Indian meal for the town and an inspector of fish for the county.

The powers of government over the County generally were reposed in the County Court of thirteen justices, appointed by the governor. It will be noted by the reader that the exercise of powers of state government over localities were far more extensive than those of today.

⁵In the Acts of 1850-51 this was called "Thompson's Cross Roads (formerly Ball's Cross Roads.)"

On Jan. 25 Bill No. 79 came before the House for its second reading and on motion of Mr. Love, the bill was recommitted to committee and on Feb. 8 it was reported back as amended. On Feb. 13 the bill was taken upon the motion of Mr. Tyler and made the order of the day on Thursday of the following week (Feb. 18th).

The crucial amendment brought back to the House was to give the County of Alexandria one delegate rather than, as originally proposed, a joint delegate with Fairfax. The amendment was debated at length and when the vote was put on Feb. 18 there were 30 ayes and 81 noes. Thus, the amendment was lost. The bulk of the 30 votes came from the Northern neck counties and those adjacent, such as Frederick and Jefferson, which were also Northern Virginia counties. With only two exceptions, all the Western and Southern counties voted against giving Alexandria County a delegate. The western part of the state was bitterly opposed on constitutional grounds, contending that the giving of Alexandria County a delegate was, in fact, a reapportionment, which was called for only once every 10 years. The west also felt that it would give the Eastern part of the state even heavier representation at a time when the Western portion felt it was already being "shortchanged", to use a phrase commonly heard in the present day (1958) urban communities.

On the following day (Friday, Feb. 19) H. B. 79 again came up for vote and a number of amendments being adopted, the bill passed to its 3rd reading. On Saturday, the measure passed without a recorded vote.

The House opponents to giving Alexandria County a delegate to herself reckoned without the Senate, which, when it received the bill, amended it to provide that Alexandria County be given a delegate. When the measure came back to the House, Mr. Dorman of Rockbridge offered an amendment to the Senate amendment providing "And for the purpose of guarding against any misconstruction hereafter, this General Assembly doth hereby declare that in giving to the county of Alexandria a separate delegate, it is not to be regarded as a reapportionment of representation under the Constitution."

The reason for the amendment was to give added strength to the Senate amendment since it had been argued that the giving of a separate delegate to Alexandria was a reapportionment under the Constitution. On putting Dorman's amendment, it was adopted by a vote of 75 to 25.

Thereafter the question upon agreeing to the Senate amendment as amended was put and defeated 54 to 49. It is to be noted

that the vote was much closer than when the original question came up. Unquestionably Dorman's amendment helped to strengthen the side of those fighting for a single delegate for Alexandria County. Probably more important, however, was the fact that the House members were growing tired and were willing to give in rather than protract the argument. It had been a long session, starting on Dec. 7, with only four days recess at Christmas. On the very day the Senate amendment came to a vote the House considered adopting a rule limiting each member to fifteen minutes debate.

Other Senate amendments of a minor nature were considered, one adopted and the others agreed to. On March 9th, the same day that the House authorized one Samuel F. B. Morse and others to run a magnetic telegraph line thru Virginia, the Senate asked the House for a conference upon the disagreement of the two Houses. The House immediately agreed and the following conferees were named on the part of the House: Messrs Bocock (Buckingham), Harrison (Loudoun), Dorman (Rockbridge), Tyler (Prince William), Person (Nelson), Goodson (Washington), and Freeman (Sussex).

The House conferees were 4 to 3 against giving Alexandria its own delegate, Bocock, Harrison, Freeman and Goodson being opposed. It is interesting to note that Burr Harrison of Loudoun had changed sides between the first vote on Feb. 18th and the second vote on March 8th.

The Senate committee was composed of Baptist (Mecklenburg and Halifax), Rogers (Loudoun and Fairfax), Sloan (Berkeley, Morgan and Hampshire), Stanard (Charles City, James City, New Kent, Henrico and City of Richmond), Witcher (Patrick Henry and Pittsylvania).

On March 10 the committee of conferees presented a report denying Alexandria County a delegate, and providing that Alexandria and Fairfax should elect one delegate "until a reapportionment shall take place, or until otherwise provided by the General Assembly." This, the first report, was ordered to be laid on the table. On the same day the Senate communicated to the House that it had disagreed to the conference report and asked for another conference, which the House agreed to. On the following day the Speaker named Messrs Daniel (Prince George), Love (Fairfax), Carson (Frederick), Strother (Rappahannock), and Cook (Roanoke) to the committee of conference. Love and Strother favored a separate delegate, while Daniel, Carson and Cook were opposed. On March 11, the Senate advised the House that they had appointed their conferees, who were:

Stanard (Charles City, James City, New Kent, Henrico and City of Richmond), McMullen (Washington, Russell, Scott and Lee), Caperton (Greenbrier, Monroe, Giles, Montgomery, Floyd, Mercer and Pulaski), Woolfolk (Culpeper, Madison, Orange, Rappahannock and Greene), and Deneals (Rockingham and Pendleton).

It is to be noted that 10 of the 32 Senators were on these conference committees.

On the following day, Friday, March 12, the conferees reported and the report was promptly laid upon the table upon the motion of Mr. Bocock. The struggle between the two Houses appeared to be headed for a deadlock, leading some to fear that the bill would be jeopardized. Suddenly, however, on the following day, Saturday, March 13, the Senate sent one of its members (Mr. Rogers) to the House to inform the House that the Senate had reconsidered their vote disagreeing to the report of the first committee of conferees, and had adopted the recommendations of that committee. So Alexandria County had lost the fight, at least temporarily.

It will be recalled that the first committee of conference had agreed that the new county of Alexandria would not receive a delegate for itself alone, but that it and Fairfax should be entitled to one delegate together. There is some evidence that this view prevailed for fear that the granting of a separate delegate in this act would constitute an unconstitutional reapportionment, thus jeopardizing the constitutionality of the entire act of retrocession.

It would be interesting to know if there were a gentlemen's agreement that at a later date, when the act authorizing retrocession could not be placed in jeopardy by the constitutional question, Alexandria would be given a delegate all its own. But the books are closed and lips are sealed on what occurred behind the scenes between the conferees and the leaders of the two houses fighting for a separate delegate.

On that historic March 13 the House also passed 20 other measures including bills providing for the enlargement of the Western lunatic asylum, providing for flour inspection in the town of Staunton, a measure to incorporate the Manassas Gap turnpike company, a bill to incorporate the Virginia steel company, and a bill directing the school commission of Appomattox County to pay Barbara Wright a sum of money for instruction of poor children in 1845. The act extending jurisdiction of Virginia over Alexandria County provided that it should be in force from the 20th of March, for at that time the

governor of Virginia had no right of veto and his signature was not necessary.

No doubt those charged with responsibility for guiding the measure through the two houses heaved a sigh of relief...but not for long.

On the following Thursday, March 18th, Mr. Harrison of Loudoun rose and obtained special permission to introduce a bill, the time for introducing bills having passed, to amend the new Act entitled "An act to extend the jurisdiction of the Commonwealth of Virginia over the County of Alexandria", and that Messrs. Burr Harrison, Leake, Stephenson, Holladay and Lee prepare the bill and bring it in. Permission having been given, Mr. Harrison presented the bill (No. 358) which was read for the first, second and third time. It had been discovered that House Bill 79 was deficient in one material respect. No provision had been made for qualifying the justices and the organization of the first County Court. House Bill 358, no copy of which was included in the House Journal, rectified this oversight.

In the rush for adjournment, the bill passed the House on March 19th, and was also passed on the same day by the Senate. Adjournment of the General Assembly was taken on March 23rd.

The events which occurred in the following year lend credence to the belief that a side agreement was made over the provision that caused the most difficulty. In December 1847 two delegates, one from Alexandria County and one from Fairfax County, showed up at the General Assembly, demanding that each be seated. Both were.